

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-7588

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

GAYLE MCQUOID HOLLEY, individually
and on behalf of JAMES MCQUOID,
NORMAN MCQUOID, THOMAS MCQUOID,
DOUGLAS MCQUOID, MICHAEL MCQUOID,
and ADELAINE MCQUOID, her minor
children,

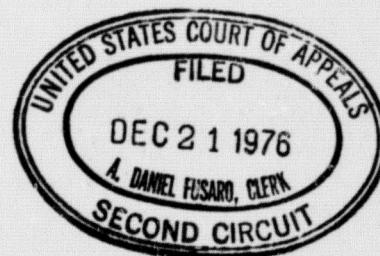
Plaintiff-Appellant,

-vs-

ABE LAVINE, as Commissioner of the
New York State Department of Social
Services, and JAMES REED, as
Commissioner of the Monroe County
Department of Social Services,

Defendants-Appellees.

B



ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

APPENDIX

K. WADE EATON, ESQ.
Greater Up-State Law Project
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500
Attorney for Plaintiff-Appellant

PAGINATION AS IN ORIGINAL COPY

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DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	R 23	S	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR. NUMBER
209 1	75 0151	04 17 75	3	444	1				permanent injunction eet.	0902		75 0151

PLAINTIFFS

HOLLEY, Gayle McQuoid, Individually
and on behalf of
McQUOID, James
McQuoid, Norman
McQuoid, Thomas
McQuoid, Douglas
McQuoid, Michael
McQuoid, Adelaine, her minor children

DEFENDANTS

LAVINE, Abe, as Commissioner of
the New York State Department
of Social Services
REED, James, as Commissioner
of the Monroe County
Department of Social Services

CAUSE 42 U.S.C. Sect. 1983. Action
challenges validity of Sec. 131-k of N.Y.S.
Social Services Law which deprives aliens
residing in the U.S., under color of law,
of their rights to public assistance.

nah

ATTORNEYS

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Monroe County Legal Assistance
Greater Up-State Law Project
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716-325-2520

Appeal: K. Wade Eaton, Esq.

Charles G. Porreca, Esq.
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Louis J. Lefkowitz, Atty. Gen.
Paul O. Harrison, Asst. Atty. Gen.
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Rochester, New York 14614

Alan W. Rubenstein,
Principal Atty. of Counsel
Louis J. Lefkowitz, Attorney General
of the State of New York
The Capitol
Albany, New York 12224

1

<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	

DATE 1975	NR.	PROCEEDINGS	BEST COPY AVAILABLE
Apr. 17		Filed complaint & order to show cause why an order should not be issued granting preliminary injunction, convening a 3-judge court etc. ret. 4-28-75, service by other than U.S. Mar. permitted-Burke, DJ (filed in Roch. by Judge Burke)	F-163
17		JS 5 made	
28		Filed Deft., Reed, affidavit, notice of motion & motion to dismiss ret. at Roch. 4-28-75.	
28		Filed Deft., Lavine, notice of motion & motion to dismiss ret. at Roch. 4-28-75.	
28		Filed Deft., Lavine, affidavit opposing preliminary injunction.	
28		Order to show cause for preliminary injunction, etc. Motion by deft., Lavine, to dismiss., Motion by deft., Reed to dismiss To be submitted 2 wks. from today.	
July 31		Filed decision and order dismissing the action for lack of jurisdiction over subject matter and because the complaint fails to state a claim upon which relief may be granted-Burke, DJ Notice & copies to Margaret M. Mahoney & K.Wade Eaton, Paul O. Harrison and Charles G. Porreca	F-166
31		Filed judgment dismissing the action for lack of jurisdiction etc.-Clerk Notice & copies to Margaret M. Mahoney, K.Wade Eaton, Paul O. Harrison and Charles G. Porreca	F-166
31		JS 6 made	
Aug. 8		Filed Pltfs'. Notice of Appeal (copy mailed to Mr. Lefkowitz, Roch., Mr. Porreca and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Eaton)	
Sept. 4		Original papers, docket entries and Clerk's certificate mailed to Clerk, CCA	
1976			
Feb. 23		Filed Deft., Stephen Berger, as Commissioner of N.Y. State Dept. of Social Services answer to complaint.	
Mar. 5		" Opinion and Judgment of CCA reversing Order and Judgment of District Court and remanding for further proceedings with costs taxed against appellees in the amt. of \$170.06	
5		JS 5 made	
26		Original papers returned from CCA	
July 2		Filed Deft., Reed, Answer	
2		Filed Pltfs'. notice of motion for an order granting summary judgment etc. ret. 7-12-76	
2		" Pltfs. affidavit of service.	
9		Filed Deft., James Reed, notice of cross-motion for summary judgment ret. 7-12-76	
9		Filed Deft., State Commissioner of Social Services, notice of cross motion for summary judgment ret. 7-12-76	
12		Motion by Pltf. for summary judgment. Motions by Defts. for summary judgment. To be submitted 9-13-76	
Nov. 22		Filed Decision & order that pltfs. motion for summary judgment & for a 3-judge court is in all respects denied. Summary judgment is granted in favor of deft., State Commissioner of Social Services against pltfs. declaring that N.Y. Social Services Law Sec. 131-R & departmental regulation 18 NYCRR, Section 349.3 as enacted & applied, do not conflict with the provisions of 45 CFR etc-Burke, DJ Notice & copies to K. Wade Eaton, Louis J. Lefkowitz & Charles G. Finch	F-182
23		Filed Judgment on Decision by the Ct.-Clerk Notice & copies to K. Wade Eaton, Louis J. Lefkowitz & Charles G. Finch	F-182
26		" Pltfs'. Notice of Appeal (copy mailed to Mr. Lefkowitz, Albany and Mr. Porreca and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Eaton)	

CLOSED

Supt. Remanded Pending

II.

JURISDICTION

3. Jurisdiction is conferred upon this Court by 28 U.S.C. §1343, and by 28 U.S.C. §1331, as the matter in controversy exceeds \$10,000.00 and arises under the Constitution and laws of the United States.

III.

PLAINTIFFS

4. The plaintiff Gayle McQuoid Holley is a citizen of Canada. She has been a resident of the United States since 1954. She presently resides in Monroe County, New York.

5. The plaintiffs James McQuoid, age 14, Norman McQuoid, age 13, Thomas McQuoid, age 12, Douglas McQuoid, age 11, Michael McQuoid, age 9, and Adelaine McQuoid, age 1, are the children of the plaintiff Gayle McQuoid, citizens of the United States by birth, presently residing with the plaintiff Gayle McQuoid Holley, in Monroe County, New York.

IV.

DEFENDANTS

6. The defendant Abe Lavine is the Commissioner of the Department of Social Services of the State of New York. He is chief administrator of that department and is responsible for exercising general supervision over the work of all local social service officials in New York, pursuant to section 34 of the New York State Social Services Law.

7. The defendant James Reed is the Commissioner of the Department of Social Services of Monroe County, New York. He is responsible for the general supervision of that department, pursuant to section 65 of the New York State Social Services Law.

V.

STATEMENT OF FACTS

8. The plaintiff Gayle McQuoid Holley was born in Ontario, Canada on August 22, 1942. She first entered the United States in 1954, as a nonimmigrant student. She resided in the state of Vermont from 1954 until 1958. In 1958 she returned to Canada for a period of approximately three months, and then reentered the United States. She has resided continuously in the state of New York since 1958.

9. The Immigration and Naturalization Service (hereinafter, the Service) has knowledge of the residence of the plaintiff Gayle McQuoid Holley in the United States. The Service has classified her as a deportable alien, pursuant to the provisions of the Immigration and Naturalization Act. The Service, in its discretion, has determined not to deport her, for humanitarian reasons, so long as her citizen children remain dependent upon her. [See Exhibit "A", attached hereto.]

10. In 1970, the plaintiff Gayle McQuoid Holley applied to the Immigration and Naturalization Service for status as an immigrant alien. Her application was denied on the ground that she was a public assistance recipient; and pursuant to the provisions of the Immigration and Naturalization Act, a person receiving public assistance is ineligible for immigrant status.

11. Since 1968 the plaintiff Gayle McQuoid Holley has been the recipient of a public assistance grant of Aid to Dependent Children on behalf of herself and her minor children, pursuant to Title 10 of Article 5 of the New York State Social Services Law.

12. The New York State legislature enacted section 131-k of the Social Services Law, effective June 7, 1974, which provides that any person who is an alien unlawfully residing in the United States shall be ineligible for public assistance in the aid to dependent children category.

13. The New York State Department of Social Services promulgated section 349.3 of Chapter II of Title 18 of the New York Code of Rules and Regulations, and released Administrative Letter 74 ADM-110, effective August 1, 1974, directing local social services agencies to implement section 131-k of the Social Services Law.

14. On August 20, 1974, the Monroe County Department of Social Services mailed to the plaintiff Gayle McQuoid Holley a notice of intent to reduce the public assistance grant for the seven (7) plaintiffs by the amount allocated to meet the needs of the plaintiff Gayle McQuoid Holley, for the reason that the plaintiff's alien status made her ineligible for public assistance. This proposed reduction would result in a loss of \$50.33 per month to the McQuoid family household. [A copy of the Notice of Intent is attached hereto as Exhibit "B".]

15. The plaintiff Gayle McQuoid Holley promptly requested that an administrative fair hearing be held by the New York State Department of Social Services to review the determination of the Monroe County Department of Social Services to reduce the plaintiffs' public assistance grant.

16. A fair hearing was scheduled by the New York State Department of Social Services to be held on September 24, 1974 and was adjourned, at the request of the Monroe County Department of Social Services, until October 22, 1974.

17. Since the request for a fair hearing was timely made by the the plaintiff Gayle McQuoid Holley, the public assistance grant continued unchanged pending the outcome of the fair hearing.

18. A fair hearing was held on October 22, 1974 at Rochester, New York, before a hearing officer employed by the New York State Department of Social Services.

19. The defendant Abe Lavine rendered a fair hearing decision on December 19, 1974, affirming the determination of the Monroe County Department of Social Services to reduce the monthly public assistance grant of the seven (7) plaintiffs by removing the plaintiff Gayle McQuoid Holley from the grant, because she is an alien unlawfully residing in the United States. [A copy of the fair hearing decision is attached hereto as Exhibit "C"]

20. The Monroe County Department of Social Services has implemented the fair hearing decision of the defendant Lavine by reducing the public assistance grant of the McQuoid household by the amount of \$91.99 per month, which is one seventh of the seven member household grant, effective January 15, 1975.

21. Since January 15, 1975, the seven (7) plaintiff members of the McQuoid household have been required to live on a budget that is only six sevenths of the amount determined by the New York State legislature to be the public assistance level for a family of seven (7).

22. On February 25, 1975 the plaintiff Gayle McQuoid Holley married Wayne Holley, a resident of Monroe County, New York. The marriage has no effect upon the eligibility of the seven (7) plaintiffs for public assistance since Wayne Holley, the recipient of a separate public assistance grant for which eligibility is based on disability, is unable to contribute and does not in fact contribute to the support of Gayle McQuoid Holley or her six (6) minor children.

VI.

FIRST CAUSE OF ACTION

23. Plaintiffs restate, reallege and incorporate each and every allegation in paragraphs 1-22.

24. The Social Security Act, 42 U.S.C. §301 et seq. is the federal statutory authority governing the New York State program of Aid to Dependent Children. Section 401 of the Social Security Act, 42 U.S.C. §601 provides:

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.
(Emphasis added.)

Section 402 (a) (10) of the Social Security Act, 42 U.S.C. §602

(a) (10) provides in pertinent part:

A State plan for aid and services to needy families with children must... provide... that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals.

Section 406 (b) (1) of the Social Security Act, 42 U.S.C. §606

(b) (1) provides in pertinent part:

The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living....

25. Since New York State receives federal support for its program of Aid to Dependent Children, the state plan for distribution of the federal funds must conform with, and must include for eligibility all persons defined as eligible under, federal law.

26. The plaintiff Gayle McQuoid Holley is the parent with whom six needy dependent children reside, and so the needs of Ms. Holley must be provided for by the State pursuant to sections 401, 402 (a) (10) and 406 (b) (1) of the Social Security Act.

27. Section 131-k of the New York State Social Services Law, as enacted and applied by defendants, operates to reduce the McQuoid household public assistance grant by the amount of the needs of the parent member Gayle McQuoid Holley.

28. Section 131-k of the New York State Social Services Law, as enacted and applied by defendants, is invalid in that it is inconsistent with, and operates to defeat the purposes of, the Social Security Act.

VII.

SECOND CAUSE OF ACTION

29. Plaintiffs restate, reallege and incorporate each and every allegation in paragraphs 1-28.

30. The regulations promulgated by the Department of Health Education and Welfare to implement the provisions of the Social Security Act, 45 C.F.R. §3.1 et seq., are the federal regulatory authority governing the program of Aid to Dependent Children in New York.

31. 45 C.F.R. §233.50, effective January 1, 1974, provides that every state plan for Aid to Dependent Children shall include for eligibility the following persons:

An otherwise eligible individual who is a resident of the United States but only if he is either (a) a citizen or (b) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203 (a) (7) or section 212 (d) (5) of the Immigration and Nationality Act).

32. The plaintiff Gayle McQuoid Holley is permanently residing in the United States under color of law, and so is eligible for public assistance pursuant to federal eligibility standards.

33. Section 131-k of the New York State Social Services Law, as enacted and applied by the defendants is invalid in that it is inconsistent with, and operates to exclude from eligibility for public assistance persons defined as eligible under, the controlling federal regulatory authority.

VIII.

THIRD CAUSE OF ACTION

34. Plaintiffs restate, reallege and incorporate each and every allegation in paragraphs 1-33 .

35. The Fourteenth Amendment to the Constitution of the United States provides that:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

36. Section 131-k of the New York State Social Services Law, as enacted and applied by the defendants, deprives the plaintiffs of their rights to equal protection and due process of law. As a result, plaintiffs are denied rights secured by the Fourteenth Amendment to the Constitution of the United States.

IX.

FOURTH CAUSE OF ACTION

37. Plaintiffs restate, reallege and incorporate each and every allegation in paragraphs 1-36.

38. The Civil Rights Act of 1871, 42 U.S.C. §1983, provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

39. Section 131-k of the New York State Social Services Law, as enacted and applied by defendants, under color of state law, deprives plaintiffs of rights secured by the Constitution and laws of the United States. Accordingly, plaintiffs are being denied rights secured by the Civil Rights Act of 1871, 42 U.S.C. §1983.

WHEREFORE, plaintiffs respectfully request that this Court:

1. Declare that section 131-k, as enacted and applied by the defendants, is invalid in that it is inconsistent with federal laws and regulations, and violates rights secured to the plaintiffs by the Constitution and laws of the United States.
2. Issue a temporary restraining order, preliminary injunction, and permanent injunction restraining defendants from enforcement of section 131-k of the New York State Social Services Law.
3. Convene a Three-Judge Court, pursuant to the Three Judge Court Act, 28 U.S.C. §2281, et seq., to hear and determine plaintiffs' constitutional challenge to section 131-k of the New York State Social Services Law.
4. Grant to plaintiffs damages in the amount of public assistance benefits denied to them as a result of the operation of section 131-k of the New York State Social Services Law.
5. Allow plaintiffs their costs, disbursements, attorney fees, and such other relief as the Court may deem equitable, just and proper.

Dated: April 17, 1975

Margaret M. Mahoney
MARGARET M. MAHONEY, ESQ.

K. Wade Eaton
K. WADE EATON, ESQ.

Greater Up State Law Project
Monroe County Legal Assistance
Corporation
80 West Main Street
Rochester, New York 14614
Tel: (716) 454-6500

Attorneys for Plaintiffs

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
UNITED STATES COURT HOUSE
Buffalo, New York - 14202

PLEASE REFER TO THIS FILE NUMBER

A10 370 151(DD)

October 16, 1974

Phone: 842-3603

Lawrence F. Tranella, LLB
Chief Legal Counsel
County of Monroe
Department of Social Services
111 Westfall Road
Rochester, N.Y. 14620

Dear Mr. Tranella:

Reference is made to your letter of September 18, 1974, concerning Gayle McQuoid, alien registration number A10 370 151.

The records of this Service indicate Mrs. McQuoid, formerly Miss Dianne Gayle Rivers, was born in Smith Falls, Ontario, Canada, on August 22, 1942. She first entered the United States as a nonimmigrant student on June 30, 1958. Her last entry was apparently on January 2, 1969, at which time she falsely claimed to be a returning lawful permanent resident of the United States.

On September 6, 1959, she married Norman Stanley McQuoid. Five children, natives and citizens of the United States, were born of this marriage. She has allegedly been separated from Mr. McQuoid since August of 1966. It is my understanding that subsequently she gave birth to a sixth child, father not known.

Although Mrs. McQuoid is illegally in the United States, deportation proceedings have not been instituted against her for humanitarian reasons relating to her six United States citizen children. So long as she is receiving public assistance, she is ineligible for an immigrant visa, for which she might otherwise be eligible.

This Service does not contemplate enforcing her departure from the United States at this time. Should the dependency of the children change, her case would be reviewed for possible action consistent with circumstances then existing.

If I may be of further assistance, please advise.

Very truly yours,

Glenn A. Bertness
GLENN A. BERTNESS
District Director

EXHIBIT "A"

13

MONROE COUNTY DEPARTMENT OF SOCIAL SERVICES

111 Westfall Road

Rochester, New York 14601

442-4000

Notice Of Intent To: ☒ Reduce ☐ Discontinue ☐ Suspend

☒ Public Assistance ☐ Medical Assistance Authorization

To Mr. Gayle McNeil
91 R. R. St.
Rochester NY.

Case Number 85855

Category MC

Date August 20, 1974

"Please disregard previous notice"

This is to advise you that this department intends to:

☒ Reduce From 513.83 to 463.50
☐ Discontinue
☐ Suspend

your ☒ Public Assistance Grant ☐ Medical Assistance Authorization on September 19 for the following reason(s).

Your alien status has deemed you to be ineligible for public assistance. You will be removed from the case and your pro-rated share of the grant will be withheld. Your family will continue to receive their pro-rated share of the grant.

*It is important for you to note that even though the medicaid card in your possession has an expiration date the end of the month, you are not eligible to use this card beyond . Use of your medicaid card beyond this date is illegal and prohibited.

☐ Bulletin Reference cited above
☒ Bulletin Reference see number 13 on reverse side

You may have a conference at this department to review your case at any time before the proposed date of the action noted above.

J. L. Larrabee
Signed

8/20/74
Date

Right To A Fair Hearing

If you believe that this action should not be taken, you may request a state fair hearing by telephoning 454-4272 or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of the hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why the action should not be taken as well as an opportunity to question any persons who appear at the hearing and present evidence against you. If you request a fair hearing before the date the action is proposed to be taken, you will continue to receive your assistance unchanged until the fair hearing decision is issued. If you need help in the fair hearing, contact one of the following community legal services: Legal Aid Society at 232-4090 or Monroe County Legal Assistance Corporation at 325-2520.

SS-098 (5-74)

EXHIBIT "B"
14

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of

GAYLE MCQUOID

: DECISION
: AFTER
: FAIR
: HEARING

from a determination by the Monroe County Department
of Social Services (hereinafter called the agency)

A fair hearing was held at 36 Main Street West, Rochester, New York, on October 22, 1974, before Thomas J. Mahoney, Hearing Officer, at which the appellant, the appellant's representatives and representatives of the agency appeared. The appeal is from a determination by the agency relating to the adequacy of a grant of aid to dependent children. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant is a recipient of a grant of aid to dependent children for herself and six children. On August 16, 1974, the agency determined to reduce appellant's grant by removing her from the budget. The agency's determination was based on its decision that appellant is an alien residing in the United States unlawfully.

(2) Appellant is an alien. Her children are native born citizens.

(3) The United States Department of Justice, Immigration and Naturalization Service has determined that appellant is illegally in the United States. It does not contemplate enforcing her departure from the United States for humanitarian reasons relating to her six children.

(4) The agency sent a Notice to Reduce appellant's grant on August 20, 1974, to be effective September 10, 1974. The appellant requested a fair hearing to review the agency's proposed action on August 19, 1974. The agency was notified by the State Department of Social Services that appellant's grant must be continued without change until a fair hearing decision is issued. The agency has continued assistance unchanged to the appellant through the date of this hearing, and the agency has stated that assistance will be continued until a fair hearing decision is issued.

Section 349.3 of the Regulations of the State Department of Social Services provides that an alien who is unlawfully residing in the United States is not eligible for public assistance. The credible evidence establishes that appellant is an alien illegally residing in the United States. The evidence further establishes that appellant had a fair hearing on this same issue on January 17, 1974, at which time the agency's determination to discontinue assistance to the appellant was reversed.

EXHIBIT "C"

However, that decision was properly made pursuant to provisions of law in effect at the time of the decision. The New York State Social Services Law was amended effective April 1, 1974, to provide that an alien who is unlawfully residing in the United States is not eligible for public assistance. Accordingly, the determination of the agency to reduce appellant's grant by removing her from the budget is proper.

DECISION: The determination of the agency is affirmed.

DATED: Albany, New York

Abe Lavine
Abe Lavine
COMMISSIONER

BY Carmen Shang
Carmen Shang
ASSISTANT COMMISSIONER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GAYLE MCQUOID HOLLEY, individually
and on behalf of JAMES MCQUOID,
NORMAN MCQUOID, THOMAS MCQUOID,
DOUGLAS MCQUOID, MICHAEL MCQUOID, and
ADELAINE MCQUOID, her minor children,

Plaintiffs,

-against-

ANSWER

Civil Action No. 75-151

STEPHEN BERGER, as Commissioner of the
New York State Department of Social
Services, and JAMES REED, as
Commissioner of the Monroe County
Department of Social Services,

Defendants.

Defendant STEPHEN BERGER, as Commissioner of the New York
State Department of Social Services of the State of New York,
by Louis J. Lebowitz, Attorney General of the State of
New York, for his answer to the complaint herein:

FIRST: Denies each and every allegation contained in
Part I (Preliminary Statement, paragraphs 1 and 2) of the
Complaint.

SECOND: Denies each and every allegation contained in Part II (Jurisdiction, paragraph 3) of the complaint.

THIRD: Admits the allegations contained in Part III (Plaintiffs, paragraphs 4 and 5) of the complaint, except affirmatively alleges upon information and belief that plaintiff Holley first entered the United States as a non-immigrant student on June 30, 1958 (Exhibit "A" annexed to the Complaint).

FOURTH: Admits the allegations contained in Part IV (Defendants, paragraphs numbered 6 and 7) of the complaint, except affirmatively alleges that Abe Lavine has been succeeded in office and in function as Commissioner of the Department of Social Services of the State of New York by Stephen Berger.

AS TO PART V OF THE COMPLAINT (Statement of Facts):

FIFTH: Admits the allegations contained in paragraph numbered 9 of the complaint and affirmatively alleges that the Immigration and Naturalization Service has determined that plaintiff Holley is illegally in the United States (Exhibit "A" annexed to the complaint).

SIXTH: Admits the allegations contained in paragraphs 11, 14, 15, 16, 17, 18 and 19 of the complaint.

SEVENTH: Denies each and every allegation contained in paragraphs numbered 8, 10 and 21 of the complaint upon the ground that defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity thereof.

EIGHTH: Denies the allegations contained in paragraph numbered 12 of the complaint except admits the existence of New York Social Services Law § 131-k, which, as a statute of the State of New York, speaks for itself.

NINTH: Denies the allegations contained in paragraph numbered 13 of the complaint and affirmatively alleges that Departmental Regulation 18 NYCRR § 349.3 was promulgated effective April 1, 1974 and was the subject of Administrative Letter 74 ADM-110 dated July 15, 1974, annexed to the motion to dismiss made on behalf of defendant Reed.

TENTH: Denies each and every allegation contained in paragraph numbered 20 of the complaint upon the ground that your defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity thereof, except admits that the Monroe County Department of Social Services has implemented the fair hearing decision (Exhibit "C" annexed to the complaint) by reducing the public assistance grant of the McQuoid household.

ELEVENTH: Denies each and every allegation contained in paragraph numbered 22 of the complaint upon the grounds that

defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity thereof, except admits that on February 25, 1975, plaintiff Gayle McQuoid Holley married Wayne Holley.

AS TO PART VI OF THE COMPLAINT (First Cause of Action):

TWELFTH: As to the matters alleged in paragraph numbered 23 of the complaint, denies or admits each and every allegation contained in said paragraph numbered 23 in the same manner as the allegations contained in paragraphs numbered 1 through 22 of the complaint have been denied or admitted.

THIRTEENTH: Denies each and every allegation contained in paragraph numbered 24 of the complaint, except admits the existence of (1) section 401 of the Social Security Act, 42 U.S.C. § 601, (2) section 402(a)(10) of the Social Security Act, 42 U.S.C. § 602(a)(10), and (3) section 406(b)(1) of the Social Security Act, 42 U.S.C. § 606(b)(1), which, as statutes of the United States, speak for themselves.

FOURTEENTH: Denies each and every allegation contained in paragraphs numbered 25, 26 and 28 of the complaint.

FIFTEENTH: Admits the allegations contained in paragraph numbered 27 of the complaint.

AS TO PART VII OF THE COMPLAINT (Second Cause of Action):

SIXTEENTH: As to matters alleged in paragraph numbered 29 of the complaint, denies or admits each and every allegation contained in said paragraph numbered 29 in the same manner as the allegations contained in paragraphs numbered 1 through 28 of the complaint have been denied or admitted.

SEVENTEENTH: Denies each and every allegation contained in paragraph numbered 30 of the complaint.

EIGHTEENTH: Denies the allegations of paragraph numbered 31 of the complaint except admits the existence of 45 C.F.R. § 233.50, which, as a regulation of the Secretary of Health, Education and Welfare, speaks for itself.

NINETEENTH: Denies each and every allegation set forth in paragraphs numbered 32 and 33 of the complaint.

AS TO PART VIII OF THE COMPLAINT (Third Cause of Action):

TWENTIETH: As to matters alleged in paragraph numbered 34 of the complaint, denies or admits each and every allegation contained in said paragraph numbered 34 in the same manner as the allegations contained in paragraphs numbered 1 through 33 of the complaint have been denied or admitted.

TWENTY-FIRST: Admits the allegations contained in paragraph numbered 35 of the complaint.

TWENTY-SECOND: Denies each and every allegation contained in paragraph numbered 36 of the complaint.

AS TO PART IX OF THE COMPLAINT (Fourth Cause of Action):

TWENTY-THIRD: As to matters alleged in paragraph numbered 37 of the complaint, denies or admits each and every allegation contained in said paragraph numbered 36 in the same manner as the allegations contained in paragraphs numbered 1 through 36 of the complaint have been denied or admitted.

TWENTY-FOURTH: Denies the allegations of paragraph 38 of the complaint except admits the existence of 42 U.S.C. § 1983 which, as a statute of the United States, speaks for itself.

TWENTY-FIFTH: Denies each and every allegation contained in paragraph numbered 39 of the complaint.

TWENTY-SIXTH: Denies each and every allegation, argument and conclusion of the amended complaint not herein admitted, controverted or specifically denied.

FIRST AFFIRMATIVE DEFENSE:

TWENTY-SEVENTH: The complaint fails to state a claim upon which relief can be granted for the reason that plaintiff, Gayle McQuoid Holley, is an alien illegally present in the United States (as shown by Exhibit "A" in her complaint herein),

and that consequently she has no standing to demand, or qualification for, and no entitlement to benefits for herself under the Social Security Laws of the United States.

SECOND AFFIRMATIVE DEFENSE:

TWENTY-EIGHTH: (a) The Court lacks subject matter jurisdiction under 28 U.S.C. § 1343 in that the complaint fails to present a substantial constitutional question, and by reason thereof, the Court lacks jurisdiction to determine any pendent statutory question; (b) The Court lacks subject matter jurisdiction under 28 U.S.C. § 1331 in that plaintiffs have not satisfied the requirements thereof.

THIRD AFFIRMATIVE DEFENSE:

TWENTY-NINTH: The Court lacks jurisdiction, by reason of the Eleventh Amendment to the Constitution of the United States, to award damages as prayed for in the complaint against defendant.

FOURTH AFFIRMATIVE DEFENSE:

THIRTIETH: The Court lacks jurisdiction, by reason of the Eleventh Amendment to the Constitution of the United States, to award attorneys' fees for plaintiffs' attorneys against defendant as prayed for in the complaint.

FIFTH AFFIRMATIVE DEFENSE:

THIRTY-FIRST: The complaint fails to state a claim upon which relief can be granted.

SIXTH AFFIRMATIVE DEFENSE:

THIRTY-SECOND: New York State Social Services Law § 131-k is, in all respects, valid and constitutional.

WHEREFORE, defendant Berger prays that this Court:

(a) Deny the injunctive, declaratory and other relief sought by plaintiffs.

(b) Dismiss the complaint and the action, or in the alternative, declare that New York Social Services Law, § 131-k is valid and constitutional.

(c) Enter an order pursuant to Rule 25(d) of the Federal Rules of Civil Procedure formalizing the automatic substitution of Stephen Berger as Commissioner of the New York State Department of Social Services as a party defendant in the place and stead of Abe Lavine, as Commissioner of the New York State Department of Social Services.

(d) Grant defendant Berger such other, further and different relief as to the Court may seem just and proper, together with costs and disbursements.

Dated: February 20, 1976

Alan W. Rubenstein

ALAN W. RUBENSTEIN

Principal Attorney, of Counsel

LOUIS J. LEFKOWITZ

Attorney General of the

State of New York

Attorney for Defendant Berger

The Capitol

Albany, New York 12224

Telephone: (518) 474-7178

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BEST COPY AVAILABLE

GAYLE MCQUOID HOLLEY, individually
and on behalf of JAMES MCQUOID,
NORMAN MCQUOID, THOMAS MCQUOID,
DOUGLAS MCQUOID, MICHAEL MCQUOID, and
ADELAINE MCQUOID, her minor children,

Plaintiffs,

-against-

ANSWER

STEPHEN BERGER, as Commissioner of the
New York State Department of Social
Services, and JAMES REED, as
Commissioner of the Monroe County
Department of Social Services,

Civil Action No. 75-151

Defendants.

Defendant, JAMES REED, as Commissioner of the Monroe County
Department of Social Services, by his attorney, Charles G. Porreca, a Social
Services Counsel, for his Answer to the Complaint herein alleges as follows:

FIRST: Denies each and every allegation contained in Part I
(Preliminary Statement, paragraphs 1 and 2) of the Complaint.

SECOND: Denies each and every allegation contained in Part II
(Jurisdiction, paragraph 3) of the Complaint.

THIRD: Admits the allegations contained in Part III (Plaintiffs,
paragraphs 4 and 5) of the Complaint, except affirmatively alleges upon
information and belief that plaintiff Holley first entered the United States as a
non-immigrant student on June 30, 1958 (Exhibit "A" annexed to the Complaint).

FOURTH: Admits the allegations contained in Part IV (Defendants, paragraphs numbered 6 and 7) of the Complaint, except affirmatively alleges that Abe Lavine has been succeeded in office and in function as Commissioner of the Department of Social Services of the State of New York by Stephen Berger.

AS TO PART V OF THE COMPLAINT (Statement of Facts) :

FIFTH: Admits the allegations contained in paragraph numbered 9 of the Complaint and affirmatively alleges that the Immigration and Naturalization Service has determined that plaintiff Holley is illegally in the United States (Exhibit "A" annexed to the Complaint).

SIXTH: Admits the allegations contained in paragraphs 11, 14, 15, 16, 17, 18, 19 and 20 of the Complaint.

SEVENTH: Denies each and every allegation contained in paragraphs numbered 8, 10 and 21 of the Complaint upon the ground that defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity thereof.

EIGHTH: Denies the allegations contained in paragraph numbered 12 of the Complaint except admits the existence of New York Social Service Law § 131-k, which, as a statute of the State of New York, speaks for itself.

NINTH: Denies the allegations contained in paragraph numbered 13 of the Complaint and affirmatively alleges that Departmental Regulation 18

NYCRR § 349.3 was promulgated effective April 1, 1974 and was the subject of Administrative Letter 74 ADM-110 dated July 15, 1974, annexed to the Motion to Dismiss made on behalf of defendant Reed.

TENTH: Denies each and every allegation contained in paragraph numbered 22 of the Complaint upon the grounds that defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity thereof, except admits that on February 25, 1975, plaintiff Gayle McQuoid Holley, married Wayne Holley.

AS TO PART VI OF THE COMPLAINT (First Cause of Action):

ELEVENTH: As to the matters alleged in paragraph numbered 23 of the Complaint, denies or admits each and every allegation contained in said paragraph numbered 23 in the same manner as the allegations contained in paragraphs numbered 1 through 22 of the Complaint have been denied or admitted.

TWELFTH: Denies each and every allegation contained in paragraph numbered 24 of the Complaint, except admits the existence of (1) section 401 of the Social Security Act, 42 U.S.C. § 601, (2) section 402(a)(10) of the Social Security Act, 42 U.S.C. § 602(a)(10), and (3) section 406(b)(1) of the Social Security Act, 42 U.S.C. § 606 (b)(1), which, as statutes of the United States, speak for themselves.

THIRTEENTH: Denies each and every allegation contained in paragraphs numbered 25, 26 and 28 of the Complaint.

FOURTEENTH: Admits the allegations contained in paragraph numbered 27 of the Complaint.

FIFTEENTH: As to matters alleged in paragraph numbered 29 of the Complaint, denies or admits each and every allegation contained in said paragraph numbered 29 in the same manner as the allegations contained in paragraphs numbered 1 through 28 of the Complaint have been denied or admitted.

SIXTEENTH: Denies each and every allegation contained in paragraph numbered 30 of the Complaint.

SEVENTEENTH: Denies the allegations of paragraph numbered 31 of the Complaint except admits the existence of 45 C.F.R. § 233.50, which, as a regulation of the Secretary of Health, Education and Welfare, speaks for itself.

EIGHTEENTH: Denies each and every allegation set forth in paragraphs numbered 32 and 33 of the Complaint.

AS TO PART VIII OF THE COMPLAINT (Third Cause of Action) :

NINETEENTH: As to matters alleged in paragraph numbered 34 of the Complaint, denies or admits each and every allegation contained in said paragraph numbered 34 in the same manner as the allegations contained in paragraphs numbered 1 through 33 of the Complaint have been denied or admitted.

TWENTIETH: Admits the allegations contained in paragraph numbered 35 of the Complaint.

TWENTY-FIRST: Denies each and every allegation contained in paragraph numbered 36 of the Complaint.

AS TO PART IX OF THE COMPLAINT (Fourth Cause of Action) :

TWENTY-SECOND: As to matters alleged in paragraph numbered 37 of

the Complaint, denies or admits each and every allegation contained in said paragraph numbered 36 in the same manner as the allegations contained in paragraphs numbered 1 through 36 of the Complaint have been denied or admitted.

TWENTY-THIRD: Denies the allegations of paragraph 35 of the Complaint except admits the existence of 42 U.S.C. § 1983 which, as a statute of the United States, speaks for itself.

TWENTY-FOURTH: Denies each and every allegation contained in paragraph numbered 33 of the Complaint.

TWENTY-FIFTH: Denies each and every allegation, argument and conclusion of the amended Complaint not herein admitted, controverted or specifically denied.

AS AND FOR A FIRST SEPARATE AND AFFIRMATIVE
DEFENSE RESPONDENT REED ALLEGES;

TWENTY-SIXTH: The Complaint fails to state a claim upon which relief can be granted.

TWENTY-SEVENTH: No where in the Complaint herein does the plaintiff allege facts showing that the challenged statute and Classification thereunder is so egregiously discriminatory as to be violative of due process; having failed to state a claim upon which relief can be granted, plaintiff's Equal Protection argument should be dismissed.

AS AND FOR A SECOND SEPARATE AND AFFIRMATIVE
DEFENSE RESPONDENT REED ALLEGES:

TWENTY-EIGHTH: The Court lacks subject matter jurisdiction in this case.

TWENTY-NINTH: Section 1343 (28 U.S.C.) confers jurisdiction on the District Court to entertain plaintiff's constitutional claim only if it is of sufficient substance to support federal jurisdiction.

THIRTIETH: Since the constitutional claim of the plaintiff herein is insubstantial, the District Court lacks jurisdiction to consider plaintiff's statutory argument and claim.

THIRTY-FIRST: There is no diversity of citizenship claim herein, and in the absence of such a claim, it is essential to jurisdiction that a substantial federal question be presented. It is herein contended that plaintiff's claim as alleged in the Complaint, lacks substantiality.

AS AND FOR A THIRD SEPARATE AND AFFIRMATIVE
DEFENSE RESPONDENT REED ALLEGES:

THIRTY-SECOND: The Social Security Act has been held not to be an Act providing for the protection of civil rights.

THIRTY-THIRD: It is contended herein that the Social Security Act is neither an Act of Congress providing for equal rights within the meaning of 28 U.S.C. section 1343 (b) nor an Act of Congress providing for the protection of civil rights within the meaning of 28 U.S.C. section 1343(4).

THIRTY-FOURTH: Jurisdiction does not lie just because the Social Security claim of plaintiff is asserted pursuant to 42 U.S.C. section 1983.

THIRTY-FIFTH: Accordingly, plaintiff's cause of action based on a violation of civil rights is without merit.

AS AND FOR A FOURTH SEPARATE AND AFFIRMATIVE
DEFENSE RESPONDENT REED ALLEGES:

THIRTY-SIXTH: That Section 131-k of the New York State Social Services Law is not in conflict with the Social Security Act or any part thereof nor is it inconsistent with any other federal statute or Regulation.

THIRTY-SEVENTH: Section 131-k is a legitimate effort to distinguish between those aliens who are lawfully in the United States and those who are not, in conformity with both the federal statutes and Regulations, and has a rational basis for furthering a legitimate state interest.

THIRTY-EIGHTH: The said state statute is valid and constitutional in all respects.

AS AND FOR A FIFTH SEPARATE AND AFFIRMATIVE
DEFENSE RESPONDENT REED ALLEGES:

THIRTY-NINTH: The court lacks jurisdiction, by reason of the Eleventh Amendment to the United States Constitution, to award damages as prayed for in the Complaint against defendant James Reed.

AS AND FOR A SIXTH SEPARATE AND AFFIRMATIVE
DEFENSE RESPONDENT REED ALLEGES:

FORTIETH: The court lacks jurisdiction, by reason of the Eleventh Amendment to the United States Constitution, to award attorneys fees to plaintiff's attorneys against defendant James Reed as prayed for in the Complaint.

AS AND FOR A SEVENTH SEPARATE AND AFFIRMATIVE
DEFENSE RESPONDENT REED ALLEGES:


FORTY-FIRST: Under the recent ruling of the United States Supreme Court in the case of Rizzo vs. Goode, _____ U.S. _____ 44 U.S.L.W. 4095 (1976), the defendants herein should not have been named as 42 U.S.C. section 1983 defendants and the plaintiff's Complaint fails to state facts alleging a violation of civil rights against the plaintiff by the named defendants, individually, in this case.

FORTY-SECOND: That pursuant to the above stated ruling a state official is not subject to the strictures of 42 U.S.C. section 1983 unless he directs the deprivation of constitutional rights.

WHEREFORE, defendant Reed prays that this Court:

- (a) Deny the injunctive, declaratory and other relief sought by plaintiffs.
- (b) Dismiss the Complaint herein and the action in all respects, or in the alternative, declare that New York Social Services Law, § 131-k is valid and constitutional.
- (c) Grant defendant Reed such other, further and different relief as to the Court may seem just and proper, together with costs and disbursements.

Dated: March 31, 1976



CHARLES G. PORRECA, a
Social Services Counsel, as attorney for
JAMES REED, Director of Monroe County
Department of Social Services
111 Westfall Road
Rochester, New York 14620
Tel: (716) 442-4000

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GAYLE McQUOID HOLLEY, Individually and
on behalf of JAMES McQUOID, NORMAN
McQUOID, THOMAS McQUOID, DOUGLAS
McQUOID, MICHAEL McQUOID and ADELAINE
McQUOID, her minor children,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the
New York State Department of Social
Services, and JAMES REED, as Commis-
sioner of the Monroe County Department
of Social Services,

Defendants.

NOTICE OF MOTION

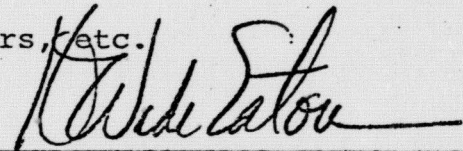
Civ. No. 75-151

PLEASE TAKE NOTICE that, upon the complaint herein,
the answers of the respective defendants, and the affidavit
of K. Wade Eaton, Esq., sworn to the 23rd day of June, 1976,
and upon all prior proceedings had heretofore herein, the
plaintiff will move this Court before the Honorable Harold P.
Burke, at the United States Courthouse, 100 State Street,
Rochester, New York, on the 12th day of July, 1976, at 10:00
o'clock in the forenoon of that day, or as soon thereafter as
counsel may be heard, for an order granting summary judgment
to the plaintiff on the first, second and fourth causes of
action as set forth in her complaint, pursuant to Rule 56(a)
of the Federal Rules of Civil Procedure, or, in the alternative,

for an order requesting that the Chief Judge of the Court of Appeals for the Second Circuit convene a three-judge district court, pursuant to 28 U. S.C. §§2281 et seq., to hear and determine plaintiff's motion for summary judgment as to the third cause of action as set forth in her complaint, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure.

Dated: June 23, 1976

Yours, etc.



K. WADE EATON, ESQ.
GREATER UP-STATE LAW PROJECT
80 West Main Street
Rochester, New York 14614
Tel: (716) 454-6500

TO: ALAN W. RUBENSTEIN
Assistant Attorney General
The Capitol
Albany, New York 12224

CHARLES G. PORRECA, ESQ.
Monroe County Department
of Social Services
111 Westfall Road
Rochester, New York 14620

GAYLE McQUOID HOLLEY, Individually
and on behalf of JAMES McQUOID, NORMAN
McQUOID, THOMAS McQUOID, DOUGLAS
McQUOID, MICHAEL McQUOID and ADELAINE
McQUOID, her minor children,

AFFIDAVIT

Civ. No. 75-151

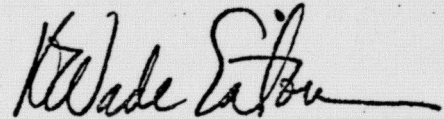
Defendants.

· K. WADE EATON, being duly sworn, deposes and says:

2. I am fully familiar with the factual background of this case, have studied all the pleadings herein including

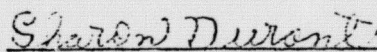
the complaint, the answer of defendant Lavine and the answer of defendant Reed, and believe that there exist no material issues of fact which would require an evidentiary hearing, and that this matter is ripe for a determination of the merits of the plaintiff's claims based on the pleadings now before the Court.

WHEREFORE, your deponent prays that this Court grant summary judgment for the plaintiff as requested in her complaint.



K. WADE EATON

Sworn to before me
this 23rd day of June, 1976.



SHARON DURANT
Notary Public, State of N. Y., Seneca County
No. 4517304
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GAYLE MCQUOID HOLLEY, individually
and on behalf of JAMES MCQUOID,
NORMAN MCQUOID, THOMAS MCQUOID,
DOUGLAS MCQUOID, MICHAEL MCQUOID, and
ADELAINE MCQUOID, her minor children,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the
New York State Department of Social
Services, and JAMES REED, as
Commissioner of the Monroe County
Department of Social Services,

Defendants.

NOTICE OF CROSS MOTION
Civil Action No. 75-151

PLEASE TAKE NOTICE that upon the pleadings herein and upon all the papers served by plaintiffs' attorney by mail on the 30th day of June, 1976, whereby plaintiffs gave notice of motion for summary judgment on their behalf, and upon the annexed affidavit of Eleanor A. Sochocki and upon all prior proceedings heretofore had herein, the undersigned will make a cross motion upon the argument of plaintiffs' said motion at the United States Court House, 100 State Street, Rochester, New York, on the 12th day of July, 1976 at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, that this Court enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in favor of the defendant State Commissioner of Social Services against the plaintiffs declaring:

(a) That New York Social Services Law § 131-k and Departmental Regulation 18 NYCRR § 349.3, as enacted and applied, do not conflict with the provisions of 45 C.F.R. § 233.50 but are in conformity thereto (plaintiffs' second cause of action),

(b) That such statute and such regulation as enacted and applied do not conflict with the Social Security Act but are in conformity thereto (plaintiffs' first cause of action),


(c) That such statute and such regulation do not deprive plaintiffs of equal protection and due process of law (plaintiffs' third cause of action), and

(d) That plaintiffs have not been deprived of rights secured by the Constitution and laws of the United States (plaintiffs' fourth cause of action),
on the ground that there is no genuine issue as to any material fact and that the defendant State Commissioner of Social Services is entitled to judgment as matter of law.

PLEASE TAKE FURTHER NOTICE that the defendant State Commissioner of Social Services will then and there move the

Court for such other, further and different relief as to the
Court may seem just and proper.

Dated: July 8, 1976



ALAN W. RUBENSTEIN
Principal Attorney, of Counsel

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant
State Commissioner of
Social Services
Office & P.O. Address
The Capitol
Albany, New York 12224
Telephone (518) 474-7178

TO: K. WADE EATON, ESQ.
Greater Up-State Law Project
80 West Main Street
Rochester, New York 14614
Attorney for Plaintiffs

CHARLES G. PORRECA, ESQ.
Monroe County Department of
Social Services
111 Westfall Road
Rochester, New York 14620
Attorney for Defendant Reed

GAYLE MCQUOID HOLLEY, individually
and on behalf of JAMES MCQUOID,
NORMAN MCQUOID, THOMAS MCQUOID,
DOUGLAS MCQUOID, MICHAEL MCQUOID, and
ADELAINE MCQUOID, her minor children,

-against-

AFFIDAVIT

Defendants.

ELEANOR A. SOCHOCKI, being duly sworn, deposes and says:

41

2. I submit this affidavit in opposition to plaintiffs' motion for summary judgment and in support of the granting of summary judgment in favor of the defendant State Commissioner of Social Services. Philip L. Toia has succeeded Abe Lavine as State Commissioner of Social Services, and I am authorized to submit this affidavit on his behalf. This affidavit is based on personal knowledge and on information appearing in departmental files.

3. In November 1973, the New York State Department of Social Services received from the United States Department of Health, Education and Welfare, copies of SRS Program Regulation 10-11 (C-13) dated November 2, 1973 advising New York State of the promulgation of federal regulations requiring the states to exclude aliens not lawfully in this country from programs administered in accordance with Titles IV- (AFDC) and XIX (Medical Assistance) of the Social Security Act. The states were required to submit plan amendments to conform to the federal requirement that public assistance not be paid to aliens illegally in this country. Annexed hereto and made a part hereof as Exhibit "A" is a true copy of SRS Program Regulation 10-11 (C-13). The new regulations were 45 C.F.R. § 233.50 (AFDC) and 45 C.F.R. § 248.50 (Medical Assistance). They became effective January 2, 1974.

4. New York State amended its statutes and regulations to comply with 45 C.F.R. § 233.50 and 45 C.F.R. § 248.50. Chapter 811 of the Laws of 1974, effective June 7, 1974, added section

131-k to the Social Services Law to make ineligible for aid to dependent children, home relief or medical assistance, except for a described period of 30 days, an alien unlawfully residing in the United States or who fails to furnish evidence that he is lawfully residing in the United States. Annexed hereto and made a part hereof as Exhibit "B" is a true copy of a memorandum submitted by the New York State Department of Social Services to the Governor in support of Assembly Bill 8254-A which the Governor signed as Chapter 811. This memorandum stated that "(t)his bill, if enacted, and the state regulation, as described above, would serve to conform our State plan to the new Federal requirements with regard to illegal aliens." The state procedures allow the payment of state-financed Home Relief for a thirty-day period to afford the illegal alien time to clarify his status.

5. Departmental Regulation 18 NYCRR 349.3 was promulgated May 2, 1974 to be effective April 1, 1974 and is virtually identical to the statute. A copy of 18 NYCRR 349.3 was duly forwarded to the Regional Office, Department of Health, Education and Welfare as part of Transmittal No. 74-37 and received August 23, 1974. The portion of the amendment to the state plan containing 18 NYCRR 349.3 was approved by William Toby on behalf of Elmer Smith, the Regional Commissioner on August 15, 1975.

6. The Department of Social Services found it necessary to prepare an administrative letter to advise local social services districts of the new policy concerning public assistance to aliens not legally within the country and procedures to verify an alien's status. The department requested the assistance of the United States Immigration and Naturalization Service. A meeting was held on February 7, 1974 in New York City with officials of the United States General Accounting Office, the Immigration and Naturalization Service and the New York State Department of Social Services. Annexed hereto and made a part hereof as Exhibit "C" is a true copy of a memorandum dated February 19, 1974 wherein your deponent described the topics discussed at this meeting.

7. Officials from the Immigration and Naturalization Service explained the registration requirements for aliens and the various immigration documents that are issued to aliens who are legally within the country. They suggested that their booklet, Documentary Requirements for Aliens in the United States (M-97) would assist the local social services districts in determining whether verification of an alien's status was required. The Department agreed to clear the administrative letter with Immigration and Naturalization Service before issuance.

8. Accordingly, by letter dated June 13, 1974, a true copy of which is annexed hereto and made a part hereof as Exhibit "D", a draft administrative letter was mailed to Mrs. Nina Rao Cameron, District Counsel, Immigration and Naturalization Service for her review. By letter dated July 8, 1974 a true copy of which is annexed hereto and made a part hereof as Exhibit "E", a proposed form that would be sent by local social services districts to Immigration and Naturalization Service to verify an alien's status was mailed to Mrs. Cameron.

9. By letter dated July 18, 1974, a true copy of which is annexed hereto and made a part hereof as Exhibit "F", the District Counsel, Immigration and Naturalization Service advised me that she had reviewed the administrative letter and suggested certain minor revisions. By letter dated August 1, 1974, a true copy of which is annexed hereto and made a part hereof as Exhibit "G", Administrative Letter 74 ADM-110 was sent to Immigration and Naturalization Service.

10. The New York State Department of Social Services mailed to the local commissioners of social services Administrative Letter 110 for the year 1974 (No. 74 ADM-110). Annexed hereto and made a part hereof as Exhibit "H" is a true copy thereof. The letter describes the procedure for

determining an applicant's citizenship and alien status in detail including: entry of birthplace for each applicant, verification of citizenship for persons born in the United States, entry of port of entry and status of persons not born within the United States, verification of those persons' status as citizens or aliens including an examination of documents supplied the alien by the United States Department of Justice, Immigration and Naturalization Service. It is only if either the person can not verify his status or the documents are of questionable validity that Home Relief or medical assistance is granted for a temporary period of thirty days. The social services district is then required to complete form DSS-2361, Request for Immigration Information (74 ADM-110, Attachment 3) to verify the person's status and to forward the form to the Immigration and Naturalization Service which determines the person's status. The social services decision as to the applicant's eligibility for public assistance is based upon Immigration and Naturalization Service's determination as to whether the person is legally within the United States.

11. The complaint alleges that plaintiff Holley had been a recipient of Aid to Dependent Children public assistance for herself and minor children since 1968. The New York State Department of Social Services policy, prior to promulgation of the federal regulations, was to grant assistance to aliens

regardless of their status. Departmental files indicate that the Monroe County Department of Social Services, in accordance with Social Services Law 131-k and 74 ADM-110, telephoned the Immigration and Naturalization Service, August 1974 to verify plaintiff's alien status and was advised that she was an illegal alien. Acting on that determination, the County Department transferred plaintiff's grant to Home Relief for thirty days to be terminated thereafter because she was not eligible for public assistance.

12. Plaintiff requested a fair hearing to review the action of the County. A fair hearing was duly held on October 22, 1974 before Thomas J. Mahoney, Hearing Officer. The Commissioner rendered a decision on December 19, 1974 (Exhibit "C" to the complaint) and found that "(t)he credible evidence establishes that appellant is an alien illegally residing in the United States," and affirmed the determination of the agency since the statute provides that aliens unlawfully residing in the United States are not eligible for public assistance.

13. This finding was premised upon a letter from Glenn A. Bertness, District Director, Immigration and Naturalization Service, which was introduced into evidence at the fair hearing and which is annexed as Exhibit "A" to the complaint. The letter recites that "Although Mrs. McQuoid is illegally in the

United States, deportation proceedings have not been instituted against her for humanitarian reasons relating to her six United States citizen children. So long as she is receiving public assistance she is ineligible for an immigrant visa, for which she might otherwise be eligible."

14. I have compared Exhibits "A" through "H" with the originals, file copies or official copies thereof, as the case may be, and do certify that such exhibits are true and complete copies of such originals, file copies or official copies.

WHEREFORE your deponent respectfully requests that summary judgment be granted in favor of the defendant State Commissioner of Social Services and against plaintiffs and that the State Commissioner have such other, further and different relief as, to the Court, may seem just and proper.

Eleanor A. Sochocki
Eleanor A. Sochocki

Sworn to before me this

8 day of July, 1976

Glenn R. Lefebvre
Notary Public

GLENN R. LEFEBVRE
NOTARY PUBLIC, State of New York
Reg. No. 4508937
Qualified in Albany County
Commission Expires March 30, 1977

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

SRS PROGRAM REGULATION 10-11(C-13)

November 2, 1973

TO: STATE ADMINISTRATORS AND OTHER INTERESTED ORGANIZATIONS AND AGENCIES

SUBJECT: Citizenship and Alienage - Titles I, IV-A, X, XIV, XVI and XIX of the Social Security Act.

CONTENT: Final regulations which implement the U.S. Supreme Court decision in Graham v. Richardson by requiring States to include all aliens who are lawfully in this country and exclude "illegal" aliens.

EFFECTIVE DATE: The regulations are effective on January 2, 1974.

BACKGROUND: Proposed regulations on this subject were published in the Federal Register first on June 16, 1972 (issued to States by AO-IM-72-22) and then on June 27, 1973 (issued by AO-IM-73-37).

PLAN MATERIAL: States whose approved plans do not meet the conditions imposed by this regulation must submit plan amendments no later than 60 days from date of publication in the Federal Register.

RECORDS:

SRS Regional Commissioners


Administrator

11/2/72

TITLE 45 - PUBLIC WELFARE
CHAPTER II - SOCIAL AND REHABILITATION SERVICE
(ASSISTANCE PROGRAMS),
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 233 - COVERAGE AND CONDITIONS OF ELIGIBILITY
IN FINANCIAL ASSISTANCE PROGRAMS

PART 248 - COVERAGE AND CONDITIONS OF ELIGIBILITY
FOR MEDICAL ASSISTANCE

Citizenship and Alienage

Notice of proposed regulations for the programs administered under titles I, IV-A, X, XIV and XVI, and XIX of the Social Security Act, relating to citizenship and alienage, was published in the Federal Register on June 27, 1973 (38 FR 16911).

A total of nine letters were received from members of Congress, State welfare agencies, Legal Aid groups and other organizations.

Specific comments were as follows:

1. Leave exclusion optional with State. One State agency expressed concern that they would be spending unnecessary administrative time determining the status of applicants and recipients in their State. Since they do not feel aliens are a problem in their State, they

suggested the exclusion be optional so those States with problems may adopt the exclusion and those with no problem can avoid unnecessary determinations.

While the mandate to exclude unlawful aliens may impose some administrative burden, we believe the States are granted sufficient administrative flexibility to vary the verification procedures in accordance with the extent of the problem in the State.

2. Places difficult if not impossible burden on applicants to prove status. Several legal aid groups and immigration related groups objected on the grounds that the regulation is contrary to Graham v. Richardson; that the burden of establishing alien status is difficult if not impossible for the alien; and that the delay necessitated by the complexity of the procedure would impose undue hardship on the applicant. Two of the legal aid groups suggested adopting California's approach whereby the agency takes the applicant's certification of status, signed under penalty of perjury, and grants assistance pending clarification with the U.S. Department of Immigration and Naturalization.

Nothing in this regulation would preclude a State from adopting as an administrative procedure, the California method of certification followed by verification with Federal immigration authorities to determine alien status. Rather than require that States follow a prescribed procedure, we prefer to permit each State to adopt such administrative procedures as are appropriate to its particular circumstances.

The two immigration-related groups recommended adoption of a previous proposal, published on June 16, 1972 (37 FR 11977), which was interpreted as requiring inclusion of aliens not legally in this country, and to which strong objections were raised at the time. One Senator and one State agency strongly supported the proposed regulation.

Requiring inclusion of illegal aliens, or leaving the matter to State option would be inconsistent with Title III of Public Law 92-603, which establishes a Federal program of Supplemental Security Income for the Aged, Blind, and Disabled (SSI) that excludes aliens not lawfully residing in this country. Accordingly, the regulations as proposed on June 27, 1973, are hereby adopted.

Sections 233.50 and 248.50 of Chapter II of Title 45 of the Code of Federal Regulations are revised to read as follows:

§233.50 Citizenship and alienage.

Conditions for plan approval. A State plan under title I, IV-A, X, XIV, or XVI of the Social Security Act shall include an otherwise eligible individual who is a resident of the United States but only if he is either (a) a citizen or (b) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

§248.50 Citizenship and alienage.

Conditions for plan approval. A State plan under title XIX of the Social Security Act shall include an otherwise ~~eligible individual who is a resident of the United States~~ but only if he is either (a) a citizen or (b) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302)).

Effective Date: The regulations in this section shall be effective

60 days after date of publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; 13.754, Public Assistance-Social Services; 13.761, Public Assistance-Maintenance Assistance (State Aid))

DATED: SEP 20 1973

/s/ James S. Dwight, Jr.

Administrator, Social and
Rehabilitation Service

APPROVED: OCT 24 1973

/s/ Caspar W. Weinberger

Secretary

"Certified to be a true copy of the original"

MEMORANDUM ACCOMPANYING COMMENTS ON BILLS BEFORE

THE GOVERNOR FOR EXECUTIVE ACTION

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES

May 23, 1974

ASSEMBLY
Int. 8254-A

Introduced by Mr. Emery

RECOMMENDATION: Approval

STATUTES INVOLVED: Social Services Law

EFFECTIVE DATE: Immediately

DISCUSSION:

1. Purpose of bill: This bill would render a person unlawfully residing in the United States, or who fails to furnish evidence that he is lawfully residing in the United States, ineligible for aid to dependent children, home relief, or medical assistance, except that such person may receive Home Relief and Medical Assistance for a temporary period of up to thirty days in order to allow time for referral of the case to the U.S. Immigration and Naturalization Service or the nearest consulate of such person's county for appropriate action or assistance.
2. Summary of provisions of bill: A new section, to be section 131-k, would be added to the Social Services Law to accomplish the above purpose.
3. Prior legislative history of bill and similar proposals: None known.
4. Known position of others respecting bill: None known.
5. Budget implications: A 1971 Aid to Families with Dependent Children Characteristic Study indicates that there are as many as 25,000 illegal aliens now in New York State's public assistance rolls in the category of Aid to Dependent Children, receiving benefits totalling \$25 million annually and consuming Medicaid services up to \$15 million annually. On the basis of this study, the total savings to the State and local districts on their share of such payments could be as much as \$20 million annually, or one-half the total expenditure for this group. Failure to enact the bill will subject the State to loss of the 50% federal reimbursement on ADC and MA benefits paid to illegal aliens—also \$20 million annually.
6. Arguments in support of bill: The Department of Health, Education and Welfare promulgated final regulations (45 CFR Sections 233.50 and 248.50) on January 2, 1974, under which Federal financial participation will no longer be available for public assistance and medicaid services provided to illegal aliens. The Department of Health, Education and Welfare based these new regulations on the following rationale:

First, an inference that illegal aliens may be excluded from assistance programs may arise from a Supreme Court decision (Graham v. Richardson) defining "person" for purposes of the equal protection clause of the 14th amendment as being restricted to citizens and aliens lawfully residing here;

5/23/74

Second, Congressional intent to exclude illegal aliens from assistance programs is evidenced by section 1614 (a)(i)(B)(ii) of the new Title XVI of the Social Security Act, which excludes illegal aliens from benefits under the new Supplemental Security Income program.

Under the new Federal regulations, the State has no option but to comply with respect to amending its state plan for all Federally-assisted public assistance categories, including Medicaid, and expressly directing local welfare districts to deny such assistance and services to any persons identifiable as "illegal aliens".

In addition, under the new Federal regulations, the Federal government will no longer pay its 50% share of welfare funds on expenditures for illegal aliens. This would mean that the State would be burdened with the entire cost of such payments. New York State has no obligation to grant public assistance and care to persons whose very presence in this State violates Federal law. This bill would amend the Social Services Law to prohibit Aid to Dependent Children, Home Relief, and Medicaid services to an illegal alien, except that Home Relief and Medical Assistance could be provided for a period of up to 30 days to avoid extreme hardship. The Department of Social Services amended its regulations (section 349.3) effective April 1, 1974, to add provisions therein which are substantially similar to the provisions of this bill and which would appropriately be codified by the bill.

This bill, if enacted, and the state regulation as described above, would serve to conform our State plan to the new Federal requirements with regard to illegal aliens.

7. Arguments in opposition to bill: None
8. Reasons for recommendation: See #6 above

TO: Thomas H. Kilcoyne

DATE: February 19, 1974

FROM: Eleanor A. Sochocki

SUBJECT: Implementation of Federal
Regulations 45 CFR 233.50 and 243.50
Citizenship and Alienage

I. Meeting with U. S. Immigration and Naturalization Service,
New York City, February 7, 1974

Participants: Mrs. Nina Cameron, District Counsel
U. S. Immigration and Naturalization Service

Mr. Henry Wagner, Assistant District Director
Investigations, U.S.I.N.S.

Mr. William Rigazio
U. S. General Accounting Office

Mr. Joe Unger, GAO

Mr. John Hickey, NYSDSS

Mrs. Eleanor Sochocki, NYSDSS

The GAO is working on a study to ascertain the impact on the NYC public assistance rolls of newly arrived immigrants. The two GAO staff members are presently working out of the INS office and Mr. Unger had talked with us in Albany last week. They asked if they could attend the meeting since they were interested in anything relating to aliens.

We explained New York State's policy with respect to illegal aliens - that we intended to grant assistance for no more than 30 days. The discussion was focused on the basic problem of implementing the Federal requirement - identification of the illegal aliens. The following points were covered:

1. Aliens are required to register with INS. An alien who becomes a lawful permanent resident of the United States is issued an alien registration receipt card (INS Form I-151) which is a photo ID card bearing a registration number and other identifying information such as birthdate, sex and port and date of entry. Aliens admitted temporarily or who have been paroled into the United States are issued INS Form I-94 (Arrival - Departure Record). The booklet attached - Documentary Requirements for Aliens in the United States (M. 97), describes the various immigration documents that might be carried by an alien who is legally in the U. S.

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EXHIBIT C

2. INS has two districts in New York State - New York City and Buffalo - and can verify a registration provided with the alien registration number, name, age, place of birth, port and date of entry in approximately two weeks. Without a registration number, verification would take a longer period.
3. INS staff indicated their concern with the existence of counterfeit, forged or altered immigration papers and registration cards. They expressed the opinion that even apparently legal cards in the possession of the appropriate person should be verified.
4. INS pointed out that the current PA application (DSS-1994) does not request sufficient information to verify alien status.
5. We also agreed to clear our final procedures for implementation with INS.

II. Proposals for Implementation

The PA application (DSS-1994) requires modification to provide for recording of additional information if the applicant indicates that he or any member of his household was not born in the U. S. An interim procedure can be devised for recording on the current form.

SRS has not issued any program instructions for implementing the regulations SSA has issued proposed regulations (20 CFR Part 416), Evidence of Citizenship and Alien Residence, which prescribe evidentiary requirements for the establishment of an applicant's status as a citizen or national of the U. S. or in the case of an alien lawful admission for permanent residence in the U. S. or that an alien has been residing permanently under color of law in the U. S. for use in determining SSI eligibility. A copy of these proposed rules do not indicate whether or not all such evidence will be verified.

At the present time Department regulations require verification of the place and date of birth of each person applying for PA or on whose behalf application is made. For persons who were not born in the U. S. it will now be necessary to request evidence of citizenship or alien status, such as:

- certificate of citizenship
- certificate of naturalization
- INS Form I-94 - Arrival - Departure Record
- INS Form I-151 - Alien Registration Receipt Card

This additional information can be handled in two ways:

1. If the required documentation appears to be in order and there is no suspicion of fraud, no further verification will be made. If the applicant is unable to provide any evidence, clearance with INS will be required.
2. Certificates of citizenship and naturalization need not be verified. All other documents presented by aliens will be referred for clearance to INS.

It is estimated that there are approximately 25,000 aliens (legal and illegal) receiving ADC. No estimate of the number receiving HR is available. Screening the undercare caseload and mass verification of this volume is a major undertaking.

Unless HEW should require 100 percent verification, it is recommended that the Department follow the procedure in item 1 above - request INS verification only when the evidence presented appears questionable or the applicant has no evidence to support citizenship or legal alien status.

EAS:jm
Attachment

June 13, 1974

Mr. Nina Mae Cameron
District Council
United States Department of Justice
Immigration and Naturalization Service
30 West Broadway
New York, New York 10007

Dear Mr. Cameron:

In accordance with our telephone conversation yesterday, I am enclosing the initial draft of our Department's administrative letter on citizenship and alien status.

This draft refers only to public assistance. A decision as to whether Medical Assistance eligibility will be continued in a separate release or included with PA has not yet been made. You will note that the Department's Regulations relate to both PA and MI.

I would appreciate any comments which you have and have no objections to your sharing the draft with Mr. Alegria and Mr. Unger of the CIO. I will also send you the first draft of the colonial form as soon as it is completed.

Sincerely,

Eleanor A. Sechowski

Enclosure

EIS:ed

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EXHIBIT D

July 8, 1974

Mrs. Mina R. Cameron
District Counsel
United States Department of Justice
Immigration and Naturalization Service
20 West Broadway
New York, NY 10004

Dear Mrs. Cameron:

As I discussed with you, we plan to include a copy of INS publication M-97, Documentary Requirements for Aliens in the United States, with our release to local agencies. I would appreciate your having 500 copies sent to me as soon as possible.

I am enclosing draft copies of the form which will be used by local agencies for INS verification. We plan to preprint the INS address - one for New York City and one for Buffalo. Since your agency will be the user, please feel free to make any suggestions which will simplify the process.

Thanks again for your assistance.

Sincerely,

Eleanor A. Sochocki
Principal Social Services
Program Specialist

ss/dr

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BEST COPY AVAILABLE

EXHIBIT E

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

20 West Broadway
New York, N. Y. 10007

July 18, 1974

Aliens
PLEASE REFER TO THIS FILE NUMBER
NYC 105.26

Mrs. Eleanor A. Sochocki
Principal Social Services Program Specialist
Department of Social Services of the State
of New York
1450 Western Avenue
Albany, New York 12203

JUL 22 1974

Dear Mrs. Sochocki:

I have read your administrative letter concerning the citizenship and alien status as a condition of eligibility for aid to dependent children and home relief. Congratulations on a job well done.

As I indicated over the phone referring illegal aliens to their respective consulates would accomplish nothing. They will not pay for their nationals to return home. The U. S. Immigration Service will be the agency to take the initiative and institute deportation proceedings and the consulate merely provides us with a passport or travel document when it is time to move the alien out. Paragraph c. on page 4 should be deleted. An applicant for financial assistance who presents a letter from us indicating an extended voluntary departure date, which is usually given in increments of a year at a time, should be reported to us immediately. If said alien needs financial assistance prior to being granted permanent residence he or she is excludable under Sec. 212(a)(15) of the Immigration and Nationality Act as "Aliens who in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission are likely at any time to become public charges."

I suggest that one change be made on your draft form "Request for Immigration Information." Under status - it should read Naturalized Citizen rather than Naturalized Alien.

Do you think it might be helpful under - sponsoring citizen - to indicate relationship if any - to determine legal responsibility in the State of New York?

It is gratifying to know that we have your cooperation and interest in this matter.

Sincerely,

Nina Rao Cameron
NINA RAO CAMERON
District Counsel

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EXHIBIT F

715 file
aliens

August 1, 1974

Mrs. Nina Rao Cameron
District Counsel
United States Department of Justice
Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

Dear Mrs. Cameron:

Thanks for the written confirmation of our telephone discussion on the draft citizenship and alien status release. Two of your suggestions have been incorporated - elimination of paragraph c on page 4 (other correspondence, etc.) and the change from "naturalized alien" to "naturalized citizen".

Since the amendment to the Social Services Law (Chapter 811, Laws of 1974) contained the following phrase

"... referral of the cases to the United States
immigration and naturalization service, or
nearest the consulate of the country of the
applicant or recipient..."
(underscoring mine),

such statement had to be included in our regulations and release. The procedures, however, do not provide for such a referral.

It was not possible to change the application form at this time to provide for relationship of the sponsoring citizen but this does not appear to be a problem. Legal responsibility is limited to spouse for spouse and parents for minor children. In the normal application process, the existence of a responsible person would be explored.

I am enclosing two copies of the final release (excluding attachment 2, your booklet M-97). I would appreciate your sending one copy to your Buffalo office, in order that they are aware of what is (or will be) happening.

I really appreciate all of your assistance.

Sincerely,
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EAS:sd

EXHIBIT G

Eleanor A. Sochocki

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
1450 WESTERN AVENUE
ALBANY, NEW YORK 12203

ABE LAVINE
COMMISSIONER

Effective: August 1, 1974

ADMINISTRATIVE LETTER

TRANSMITTAL NO.: 74 ADM-110

DATE: July 15, 1974

TO: Commissioners of Social Services

SUBJECT: Citizenship and Alien status as a condition of eligibility for
Aid to Dependent Children, Home Relief, and Medical Assistance

Suggested
DISTRIBUTION: All Public Assistance Staff
All Medical Assistance Staff

I. Introduction

Effective January 2, 1974 Federal Regulations require United States citizenship or status as an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States as a condition of eligibility for Federal financial participation in Aid to Dependent Children, Medical Assistance and social services. The Social Services Law was amended by Chapter 811 of the Laws of 1974, effective June 7, 1974 to permit implementation of the Federal requirement and to extend the requirement to Home Relief.

II. Policy

The Department's policy concerning illegal aliens is contained in a new Section 349.3 of Chapter II of Title 18 NYCRR. Basic provisions include:

An alien who is unlawfully residing in the United States, or fails to furnish evidence that he is lawfully residing in the United States is not eligible for Aid to Dependent Children, Home Relief, Medical Assistance and Federally participating social services except that Home Relief and Medical Assistance shall be granted for a temporary period of thirty days in order to allow time for the referral of the case to the United States Immigration and Naturalization Service, or the nearest consulate to take appropriate action or furnish assistance.

III. Program Implementation

A. Determination of Eligibility

Work flow procedures for use in determining citizenship and alien status are contained in Section IV below.

FILING REFERENCE

Dept. Regs.
349.3, 351.1, 351.2
351.20

64 NOTE: Attachment 2 is not available. It may be requested directly from the US Dept. of Justice (see p. 4 for address).

EXHIBIT H

B. Example

An ADC application or case:

Mother - has been determined ineligible by the agency in accordance with the outlined procedure because she is not a citizen or an alien legally residing in the United States.

Children - all born in the United States and by reason thereof are United States citizens.

If otherwise eligible, the mother shall be granted HR for thirty days and the children granted ADC. At the end of thirty days, HR for the mother will be discontinued but the children continue to receive ADC.

C. Determination of the thirty-day period

Failure of the applicant/recipient to provide documentation to prove citizenship or legal alien status shall result in a finding of ineligibility by the agency and the thirty-day period shall start as of the date such a decision is made. Immediate referral shall be made to the Immigration and Naturalization Service. If, as a result of the referral, INS indicates within the thirty-day period that the individual has legal status, the case, if otherwise eligible, shall be continued in the appropriate category. In all other cases, assistance will be discontinued at the end of thirty days.

D. Claiming Procedure

Although these cases are not subject to Federal reimbursement, expenditures made on their behalf shall be claimed under the appropriate program for a temporary period not to exceed thirty days in accordance with normal claiming procedures. If Federal reimbursement has been claimed since January 2, 1974 any adjustment which may be required as a result of the retroactive date shall be handled within the self-audit process in order to reverse any Federal and State aid claimed improperly.

IV. Work flow Procedures for Determining Citizenship and Alien Status and Granting Assistance

Function

Action

Citizenship/Alien Status
Review for Eligibility

Public Assistance
Application

Note: Form DSS-1994 has been reviewed as of March 1974 but is not yet available.

Medical Assistance
Application

Note: Carefully compare signature and photograph for match with Form DSS-1994 or Form DSS-515.

Public Assistance
Application

Note: Attachment 1 shows Section X of the 3/74 revision of DSS-1994.

1. Enter place of birth for each individual applying for assistance:

- a. See section of Form DSS-1994, Application/Certification for Public Assistance:

- i. Version dated 3/74 - Section A.

- ii. Version dated 12/72 - Section C.

- b. Form DSS-515, Application for Medical Assistance. Enter the place of birth of each individual applying for Medical Assistance in the Documentation Required shaded area of Section B.

2. Verify the citizenship of each person born in the United States. The following is adequate verification:

- a. A certified copy of a public record of birth or a religious record of birth or baptism evidencing birth in the United States.

- b. A United States passport.

3. For each person not born in the United States, record immigration/naturalization information:

- a. On the 3/74 version of Form DSS-1994, complete Section X.

- b. On the 12/72 version of Form DSS-1994, complete Section X, and in addition enter items (i) and (ii) under Section X below.

Medical Assistance

Application

Note: Form DSS-515 is being revised to incorporate this information.

Note: The INS booklet Documentary Requirements for Aliens in the U.S. (Attachment 2) provides examples of typical documents carried by aliens. Copies of this booklet are available at this address:

United States Department of Justice
Immigration and Naturalization Service b.
20 West Broadway
New York, New York 10007

c. On the Form DSS-515, enter in space available on page 10 the following:

- i.. Port of Entry
- ii. Status with Documentary Evidence
 - (a) Naturalized Citizen
Certificate No.
 - (b) Permanent Resident Alien
Registration No.
 - (c) Temporary Non-Immigrant Alien
Immigrant File No.
 - (d) Other
Specify Documentation

4. Verify citizenship/alien status of each person not born in the United States.

a. Evidence of U.S. citizenship

- i. Certificate of citizenship.
- ii. Certificate of naturalization.
- iii. United States passport.
- iv. Identification card for use of Resident Citizen in the United States (INS Form I-179 or INS Form I-197).

b. Evidence of permanent residence in the United States under color of law

- i. INS Form I-94 (arrival-Departure Record) endorsed REFUGEE-CONDITIONAL ENTRY.
- ii. INS Form I-94 endorsed to show bearer has been paroled for an indefinite period pursuant to Section 212 (d) (5) of the Immigration and Naturalization Act.

c. Evidence of lawful admission for permanent residence in the United States

- i. Alien Registration Receipt Card (INS Form I-151).
- ii. A re-entry permit.

5. If any person:

- a. is unable to verify citizenship/alien status, or
- b. present documentation of questionable validity,

Note: Attachment 3 is a copy of Form DSS-2361 and instructions for its use.

Complete Form DSS-2361, Verification of Alien Status, and mail promptly to INS.

The following Social Services Districts shall mail the DSS-2361 to INS in New York City:

New York City and

Counties of:	Broome	Rockland
	Dutchess	Suffolk
	Nassau	Sullivan
	Orange	Ulster
	Putnam	Westchester

All other Social Services Districts shall mail the DSS-2361 to INS in Buffalo, NY.

The appropriate address for INS has been preprinted on the DSS-2361.

Granting of Assistance

Note: MA is granted only in accordance with Department Regulation 360.11 (a)(5)

- 6. For any otherwise eligible applicant or recipient who is unable to provide acceptable evidence that he is not an alien illegally residing in the United States
 - a. Grant Home Relief and/or Medical Assistance for 30 days.
 - b. Refer to INS using Form DSS-2361.
- 7. If INS verification indicates that the citizenship/alien status is legal, provide assistance in the appropriate category.

V. Effective Date

For all new applications and recertifications on and after August 1, 1974.

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Deputy Commissioner

For any person listed in Section A who was not born in the U.S., complete the following:

FULL NAME (First, Middle Initial, Last)	NAME OF COUNTRY ENTERED FROM	PORT OF ENTRY	DATE ENTERED U.S.	If on Temp. Visa, Date Until Admitted (Form I-94)	STATUS (Check <input checked="" type="checkbox"/> one and complete additional information requested)
HOUSEHOLD MEMBER					<input type="checkbox"/> Naturalized Citizen Certificate No. _____ <input type="checkbox"/> Permanent Resident Alien - Alien Registration No. _____ Copy from Alien Card <input type="checkbox"/> Temporary Non-Immigrant Alien Immigration File No., if any _____ <input type="checkbox"/> Other, specify _____
MAIDEN NAME, if any					
SPONSORING CITIZEN (Name and Address)					
HOUSEHOLD MEMBER					<input type="checkbox"/> Naturalized Citizen Certificate No. _____ <input type="checkbox"/> Permanent Resident Alien - Alien Registration No. _____ Copy from Alien Card <input type="checkbox"/> Temporary Non-Immigrant Alien Immigration File No., if any _____ <input type="checkbox"/> Other, specify _____
MAIDEN NAME, if any					
SPONSORING CITIZEN (Name and Address)					
HOUSEHOLD MEMBER					<input type="checkbox"/> Naturalized Citizen Certificate No. _____ <input type="checkbox"/> Permanent Resident Alien - Alien Registration No. _____ Copy from Alien Card <input type="checkbox"/> Temporary Non-Immigrant Alien Immigration File No., if any _____ <input type="checkbox"/> Other, specify _____
MAIDEN NAME, if any					
SPONSORING CITIZEN (Name and Address)					

Use this section for additional space to answer any previous questions. (Refer to previous section by letter)

Attachment 1 (p 69)

REQUEST FOR IMMIGRATION INFORMATION

STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

United States Department of Justice
Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

SHADED AREAS FOR
INS USE ONLY

The following person(s) have applied for or are receiving assistance from the above Social Services Department. Please correct any errors in the information provided below, add any available missing information, and indicate in the spaces provided the individual(s) alien status according to I.N.S. records.

PRESENT NAME		MAIDEN NAME/OR NAME USED AT TIME OF ARRIVAL	
PRESENT NAME		MAIDEN NAME/OR NAME USED AT TIME OF ARRIVAL	
CURRENT ADDRESS	SOCIAL SECURITY NUMBER	DATE OF BIRTH Mo. Day Yr.	SEX <input type="checkbox"/> Male <input type="checkbox"/> Female
CURRENT ADDRESS	SOCIAL SECURITY NUMBER	DATE OF BIRTH Mo. Day Yr.	SEX <input type="checkbox"/> Male <input type="checkbox"/> Female
SPONSORING CITIZEN (Name and Address)			
COUNTRY ENTERED FROM	PORT OF ENTRY	DATE ENTERED Mo. Day Yr.	Temp. Visa/Date Ad Mo. Day Yr.
CITIZEN OF WHAT COUNTRY	PORT OF ENTRY	DATE ENTERED Mo. Day Yr.	Temp. Visa/Date Ad Mo. Day Yr.
STATUS			
<input type="checkbox"/> Nat. Citizen/Cert. No. <input type="checkbox"/> Perm. Res. Alien/Reg. No. <input type="checkbox"/> Temp. Non-Img./File No.			
STATUS			
<input type="checkbox"/> Nat. Citizen/Cert. No. <input type="checkbox"/> Perm. Res. Alien/Reg. No. <input type="checkbox"/> Temp. Non-Img./File No.			
OTHER, SPECIFY			
WORKER NAME	I.D. NUMBER	SUPERVISOR	DATE
CASE NAME	CASE NUMBER		

INS VERIFICATION

Named Alien is Lawfully Admitted for Permanent Residence ☐ Unable to Identify any Record
 ed-Alien is NOT Lawfully Admitted for Permanent Residence

OTHER COMMENTS:

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NATURE OF INS REPRESENTATIVE

DATE SIGNED

INS FILE NUMBER

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE



Documentary Requirements for Aliens in the United States

M-97
(Rev. 11-1-71)N

The Immigration Service Asks Your Help

In the regular course of daily duties you, as a local law enforcement officer or an employer, often come in contact with aliens. All aliens (non-citizens) are subject to immigration laws which regulate their entry and set the conditions of their stay. Local law enforcement officers and employers are in a good position to help in the enforcement of these laws.

The vast majority of the aliens in the United States are legally here. The information herein will help you to identify the various immigration documents that might be carried by an alien who is legally in the U.S. Most aliens lawfully in the United States should have some kind of immigration document. Exceptions: Canadians and certain other residents of Canada may be admitted to the U.S. for periods up to six months for pleasure or business without the issuance of immigration documents; however, they usually will have in their possession evidence of Canadian citizenship or residence. Other aliens, such as government officials from Mexico or Canada, and employees of treaty organizations such as NATO, are often admitted without documents. They will have some form of official identification, however.

Some aliens have entered this country illegally, and in addition, others who were given permission to enter temporarily have violated the conditions of their admission. These aliens are "wanted" by this Service. It is not the purpose of this pamphlet to authorize the arrest or detention of any person, but if an alien comes to your attention who *appears* to be in an illegal status, or you wish further information, you are requested to telephone or wire "collect" to the following office of the Immigration and Naturalization Service. Your call will be appreciated and will be given prompt attention.

Office:

Address:

Telephone:

Generally speaking, all persons in the United States are either citizens or aliens.

CITIZENS

All persons born in the United States are, with rare exceptions, United States citizens. U.S. citizenship can also be acquired by naturalization through court proceedings or by certain persons born abroad of U.S. citizen parents or parent. Long residence in this country or marriage to a citizen do not by themselves confer citizenship on an alien.

There are some ways that a person can lose his U.S. citizenship, such as naturalization or voting in another country or serving in its armed forces, conviction of treason, formal renunciation, etc.

United States citizens are not required to carry evidence of citizenship such as birth or naturalization certificates. However, most persons have some means of identification, particularly those who speak English with difficulty.

ALIENS

Generally, any person not a citizen of the United States is an alien. All aliens may be grouped as follows: (This summary of a portion of the immigration laws is not intended for use as a legal reference.)

1. *Immigrants*—aliens who have been admitted for permanent residence. They can remain indefinitely, own property, work, and move about without restriction so long as they comply with the laws relating to alien registration, changes of address and annual reports. Such aliens may become subject to deportation, however, if they (1) are convicted of certain crimes, (2) engage in subversive or immoral activity, or (3) become public charges. All are required to have Alien Registration Receipt Cards (pages 7 thru 9).

An alien coming to the United States for permanent residence is issued an immigrant visa by the Department of State at an office outside the U.S. It is a separate document which is surrendered to the Immigration and Naturalization Service at the port of entry and made a part of the Service's record relating to that alien. A Form I-151 (page 9) is then issued to the alien as evidence of his lawful admission for permanent residence.

2. *Nonimmigrants*—aliens admitted temporarily for specific purposes and periods of time. They are:
 - A. Foreign government officials on official business and their families and servants.

- B. Visitors for business or pleasure. "Business" does not include accepting employment in the United States.
- C. Aliens in travel status while traveling directly through the United States.
- D. Alien crewmen who may be given shore leave while their ship is in port, or given permission to seek a berth on another vessel. In no event may the time limit exceed 29 days. Accepting employment in the U.S. is grounds for deportation.
- E. Treaty traders and investors and their families.
- F. Alien students admitted to attend specified schools. Students may accept employment only with written permission. If they fail to maintain status as bona fide students they are subject to deportation.
- G. Representatives and personnel of international organizations and their families and servants.
- H. Temporary workers, including agricultural laborers.
- I. Members of foreign press, radio, film, or other information media and their families.
- J. Exchange visitors who are here under Department of State approved programs of study, teaching, research, or training.
- K. Fiances and fiances of United States citizens and their children.
- L. Intra-company transferees and their families.

Except for those aliens admitted specifically to work, such as agricultural laborers, nonimmigrant aliens normally may not accept employment in the United States. Students and exchange visitors may, with written permission, accept certain employment.

A nonimmigrant alien is subject to deportation and "wanted" by this Service if he violates the terms of his admission: abandons his status, overstays the period of admission, engages in criminal, immoral, narcotic or subversive activity, or accepts unauthorized employment.

- 3. *Parolees*—aliens not otherwise admissible who are sometimes paroled into the United States at the discretion of the government. They are required to carry a Form I-94 (see page 15) endorsed to show their parole status. Employment is permitted in most instances.
- 4. *Illegal entrants*—those aliens who were not admitted to the


U.S. for either temporary or permanent stay but entered in such a manner or place as to avoid inspection. These aliens are deportable. All illegal entrants are "wanted" by this Service.

An alien in an illegal status may present a false or altered card or document or, more frequently, an authentic one belonging to someone else. The first step is to determine if the holder is actually the person named on the document. Next, each document issued by the Immigration and Naturalization Service will show the conditions of admission. Often, from examining these documents and briefly questioning the alien, it can be determined that he does or does not appear to be in legal status. The most common violations of temporary admissions are working when employment has not been authorized, and remaining beyond the time to which admitted.

Naturally, aliens who enter surreptitiously will not be given any documents. However, they often claim legal status or even United States citizenship and fraudulently present some sort of documentation to substantiate their claims.

NONIMMIGRANT VISA
Actual Size

DEL NO 000007

 EMBASSY
OF THE UNITED STATES
OF AMERICA
DUBLIN

NONIMMIGRANT VISA

B-18-2 1971

CLASSIFICATION DATE

VALID IF PRESENTED TO

INDEFINITELY FOR

MULTIPLE ADMISSIONS FOR

ADMISSION TO THE UNITED STATES

ISSUED TO

GRATIS

GENERAL OFFICE

Frequently the expression "when my visa expires" is erroneously used to mean "when my period of admission expires." The following may clarify the common misunderstanding:

Temporary (nonimmigrant) visas are issued by the Department of State at offices in foreign countries. Such visa is a stamp placed on one of the pages of the passport, which usually is issued by the country of the alien's nationality. The visa may be of limited or indefinite validity. Possession of the visa does not establish a right to be in or remain in the United States. It is merely a permit to proceed to a United States port of entry to apply to the U. S. Immigration and Naturalization Service for admission into the United States. The conditions and period of admission are decided by the immigration officer at the port of entry after the alien has been interviewed. A Form I-94, Arrival-Departure Record, (page 14) showing the period of authorized admission, is issued by the immigration officer and stapled in the passport. Any extensions of stay subsequently granted are shown on the reverse of the form, which is surrendered at the time the alien departs the United States.

To be valid the visa must be unexpired when the alien applies at the port of entry. However, the remaining period of the visa's validity has no bearing on the period of authorized admission granted by the immigration officer. For example, an alien might be admitted for

six months (and perhaps even receive one or more extensions of stay) even though his visa may have been valid for only one day beyond the date on which he applied for admission. On the other hand, an alien's admission might be limited to one week, even though at the time of admission his visa may have been valid for four years. Moreover, he might be refused entry altogether, notwithstanding his possession of a valid unexpired visa.

If the bearer of a nonimmigrant visa has been admitted into the United States for a temporary period, he should also have in his possession evidence of his admission and of the terms of such admission. This evidence will usually consist of a Form I-94. However, some aliens who are here on temporary visits may have a Form I-94 but no visa.

FORM AR-3a (ALIEN REGISTRATION RECEIPT CARD)

Front—Actual Size

Form AR-3a

Registration
Number 6962241 - 282265

ALIEN REGISTRATION RECEIPT CARD

John J. Doe
1313 Main Ave.
Atlanta, Ga.

SAMPLE

KEEP THIS CARD. Keep a record of the number.

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
ALIEN REGISTRATION DIVISION
WASHINGTON, D. C.



To the Registrant:

Your registration under the Alien Registration Act, 1940, has been received and given the number shown above your name. This card is your receipt, and is evidence only of such registration. In writing to the Department of Justice about yourself, always give the number on this card.

500

10-1041

Director of Registration

Issued from 1941 to 1949. Not absolute evidence of legal permanent residence; however, holder probably not deportable. Employment in the U.S. permitted.

78

FORM AR-3a (ALIEN REGISTRATION RECEIPT CARD)

Reverse



This Alien Registration Receipt Card should be sent to the Alien Registration Division, Department of Justice, Washington, D. C., (1) if it is found; or (2) if the person named hereon departs from the United States, or becomes naturalized, or dies.

ADDRESS REPORTS—Read Carefully

The Alien Registration Act, 1940, requires all resident aliens to report each change of address within 5 days of such change. Other aliens, for example: Visitors, students, and others not admitted for permanent residence in the United States, must report their address every 3 months whether they change their address or not. Prepared forms for such address changes and reports may be obtained at any post office. A penalty of fine and imprisonment is provided by law for failure to make the required reports. Address letters and reports to the Alien Registration Division, Department of Justice, Washington, D. C.

When reporting, give both your number and name.

SAMPLE
SIGNATURE OF REGISTRANT, OR PERSON REGISTERING THE ALIEN

U. S. GOVERNMENT PRINTING OFFICE 16-10410

FORM I-151 (ALIEN REGISTRATION RECEIPT CARD)

This is to certify that

MARTINEZ-DUARTE, GUADALUPE

A11 836 475 (REGISTRATION NUMBER)

has been duly registered according to law and was admitted to the United States as an immigrant at

PORT	MO DAY YR OF ENTRY	CLASS	MO DAY YR OF BIRTH	SEX
NYC	01-01-71	SA-1	07-09-39	M

84

COMMUNICATIONS SECTION
UNITED STATES DEPARTMENT OF JUSTICE

Front—Actual Size

The person named on this card must report to the nearest Immigration and Naturalization Service office in thirty days after expiration of the registration and file for renewal as required by Section 244 of the Immigration and Nationality Act, as amended.

6267626

ALIEN REGISTRATION RECEIPT CARD
Form I-151 Rev. 5-1-65

This card will be honored in lieu of visa and passport if rightful holder is not returning from a country or area specified in Part 211 of Title 8, Code of Federal Regulations, was not absent over a year, and is not otherwise excludable under immigration laws. If travel in such a country or area, or absence of over a year is contemplated, consult Immigration and Naturalization Service office before you depart as to whether you should apply for another document. Notify I&N Service of address change during January each year and within ten days after each change of address. Obtain forms from any Immigration or Post Office. Always include your "A" number in communications to I&N Service.

Reverse

This form is issued to any alien who in any manner becomes a lawful permanent resident of the United States. Present issue is blue printing on a background of small blue dots. Previous issues were either blue or black printing on a background of blue and yellow overlays, or black printing on a light green background. Some of the previous issues vary somewhat in format from the above. All have the form number and are laminated in plastic. Employment is permitted.

**FORM I-185 (NONRESIDENT ALIEN CANADIAN
BORDER CROSSING CARD)**

<p align="center">PHOTOGRAPH</p> <p align="center">SAMPLE</p> <p align="center">GPO 16-71492-1</p>	NAME <u>Joe JONES</u>	
	ADDRESS	
	<u>111 Main Street</u>	
	<u>Ottawa, Ontario</u>	
DATE OF BIRTH		
<u>7-4-13</u>		
EXAMINED AT		ON
<u>STA</u>		<u>2-1-58</u>
		N ^o <u>20000</u>

Front—Actual Size

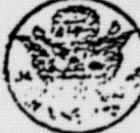
<p>NONRESIDENT ALIEN CANADIAN BORDER CROSSING CARD</p> <p>THIS CARD IS PRIMA FACIE EVIDENCE THAT THE BEARER IS ELIGIBLE TO ENTER THE UNITED STATES FOR VISITS AS A NONIMMIGRANT BORDER CROSSER, IF OTHERWISE ADMISSIBLE, AS DETERMINED BY THE U. S. IMMIGRATION OFFICER ON THE OCCASION OF EACH ENTRY.</p> <p>SAMPLE</p> <p align="center">UNITED STATES DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE</p> <p align="center">Form I-185 (7-1-57)</p> <p align="right">FORM APPROVED BUREAU OF INQUIRY NO. 45-2387</p>	
--	--

Reverse

Issued to Canadian citizens or British subjects residing in Canada to facilitate entry into the U.S. for visiting as nonimmigrant border crossers. Form is printed on pink paper and laminated in plastic. Most Canadian visitors, however, are admitted without documents. Employment in the U.S. is *not* permitted.

NONRESIDENT ALIEN CANADIAN
BORDER CROSSING IDENTIFICATION CARD

CLG N.° 001016

 CONSULATE GENERAL
OF THE UNITED STATES
OF AMERICA
CALGARY, CANADA

CANADIAN BORDER CROSSING
IDENTIFICATION CARD

ISSUED ON: MAR -6 1970

TO: _____
(a landed immigrant in Canada)

VALID INDEFINITELY FOR UNLIMITED
APPLICATIONS FOR ADMISSION TO
THE UNITED STATES FROM CANADA
AS A TEMPORARY VISITOR FOR
BUSINESS OR PLEASURE

CONSULAR OFFICE

Actual Size

Issued to nonimmigrant aliens who have been admitted to Canada for permanent residence as "landed immigrants" and seek to enter the U.S. only as temporary visitors for business or pleasure. Card is actually a stamp placed in the alien's passport or travel document. Holder must also have a valid Form I-94 (page 14). Employment in the U.S. is *not* permitted.

**FORM I-186 (NONRESIDENT ALIEN MEXICAN
BORDER CROSSING CARD)**

BEARER MAY NOT BE EMPLOYED IN THE U.S. SAMPLE		NAME SANCHEZ-RODRIGUEZ, Jose Maria	
		DATE OF BIRTH May 19, 1938	SEX M
		ADDRESS 625 Revolucion Tijuana, B.C. Mexico	
		ISSUED AT SYS	ON Apr. 3, 1971
		VALID UNTIL REVOKED No. 4363328	
UNITED STATES DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE			

Front—Actual Size

FORM I-186 Ch. 3-1-60	NONRESIDENT ALIEN MEXICAN BORDER CROSSING CARD
THIS CARD WHEN USED AS ENTRY DOCUMENT IS VALID ONLY FOR VISITS TO THE UNITED STATES OF THE MEXICAN BORDER FOR PERIODS OF 72 HOURS OR LESS IF THE BEARER IS FOUND OTHERWISE ADMITTED BY U.S. IMMIGRATION OFFICER TO REMAIN FOR A LONGER PERIOD OR PROCEED TO OTHER AREAS IN THE U.S. THE BEARER MUST IN POSSESSION OF A FORM SW-434 OR FORM I-44 ISSUED BY AN OFFICER OF THE U.S. IMMIGRATION AND NATURALIZATION SERVICE.	
AVISO PRESENTE ES VALIDA CADA VEZ QUE ENTRA A LOS ESTADOS UNIDOS SI SE DEBE PERMANECER EN LOS ESTADOS UNIDOS DURANTE UN PERIODO DE MAS DE 72 HORAS O TRASLADARSE A MAS DE 25 MILLAS DE LA FRONTERA MEXICANA USTED DEBE POSEER UNA FORMA SW-434 O FORMA I-44 EXPEDIDA POR UN OFICIAL DEL SERVICIO DE INMIGRACION Y NATURALIZACION DE LOS ESTADOS UNIDOS.	
USTED NO PUEDE ACEPTAR EMPLEO EN LOS ESTADOS UNIDOS.	

Reverse

Issued to Mexican citizens for entry into the U.S. as nonimmigrants for visits not to exceed 72 hours or 25 miles from the Mexican border. For any admission in excess of the above the alien will also have a Form SW-434 (page 13), or in some cases a Form I-94 (page 14), showing the area and time limitation of his admission. The Form I-186 is laminated in plastic. Those issued prior to 9/15/65 were blue and those issued after that date are salmon-beige. Employment in the U.S. is *not* permitted.

FORM SW-434 (MEXICAN BORDER VISITORS PERMIT)

**PERMISO PARA VISITANTES MEXICANOS A
ESTADOS FRONTERIZOS DE LOS ESTADOS UNIDOS**

BIENVENIDO A LOS ESTADOS UNIDOS

Queda Ud. autorizada a permanecer en los Estados Unidos en calidad de visitante, sea con motivo de negocios o de recreo, hasta la fecha indicada abajo. Durante este periodo, puede Ud. trasladarse a cualquier lugar de los estados de Texas, Nuevo México, Arizona o California. No se le autoriza a aceptar empleo en los Estados Unidos. Retenga este documento junto con su Tarjeta I-186 (mica) hasta que salga de los Estados Unidos.

Si Ud. desea visitar algun lugar fuera de Texas, Nuevo México, Arizona o California, o si desea permanecer en los Estados Unidos después de la fecha indicada abajo, consulte con la oficina más cercana del Servicio de Inmigración y Naturalización de los Estados Unidos.

Form I-186 No. 328 (1)

United States
Department of Justice

Immigration and
Naturalization Service

Form SW-434
(Rev. 7-1-71)

U.S. IMMIGRATION
152 FAB 0 1121
AUG 12 1971
ADMITTED
(CLASS)
UNTIL Aug 27 1971

Actual Size

Issued to the rightful holder of a valid Form I-186 (page 12) who has been admitted for a visit for business or pleasure within 25 miles of the Mexican border for a period of more than 72 hours but not more than 15 days or for a visit outside the immediate border area but within the States of Texas, New Mexico, Arizona, or California for a period of not more than 15 days. Period of validity is indicated on the admission stamp. Form is printed on safety paper. Employment in the U.S. is *not* permitted.

FORM I-94 (ARRIVAL-DEPARTURE RECORD)

Family Name (Capital Letters) SANTOS		First Name Maria	Middle Initial G.	S-550
Country of Citizenship El Salvador		Passport or Alien Registration Number G 980356		
* United States Address (Number, Street, City and State) 4900 Del Plaza Street, Fairfax, Virginia 22045				
* Airline and Flight No. or Vessel of Arrival PANAM 507		* Passenger Boarded at San Salvador		
Number, Street, City, Province (State) and Country of Permanent Residence 35 Marion Street, San Salvador, El Salvador				
Month, Day and Year of Birth May 13, 1948		U. S. IMMIGRATION 250 WAS 16 MAR 17 1972 ADMITTED <u>B-2</u> UNTIL <u>Sept. 16, 1972</u>		
City, Province (State) and Country of Birth San Salvador, El Salvador				
Visa issued at (If no visa, insert ticket number) San Salvador, El Salvador				
STAMP HERE Month, Day and Year Visa Issued March 11, 1972		FORM I-94		

Front—Actual Size

IMPORTANT NOTICE A NONIMMIGRANT ALIEN WHO ACCEPTS UNAUTHORIZED EMPLOYMENT IS SUBJECT TO DEPORTATION. • Retain this permit in your possession except when required to submit same to the Immigration and Naturalization Service. • You are permitted to remain in the U. S. for the time indicated. • To remain past this period, without permission from immigration authorities, is a violation of law. WHEN YOU LEAVE THE UNITED STATES • By sea or air, surrender this permit to transportation line. • Over Canadian border, surrender this permit to Canadian Immigration Officer. • Over Mexican border, surrender this permit to United States Immigration Officer. RECORD OF EXTENSIONS		To _____ Office _____ Office _____ Office _____ DEPARTURE RECORD
Port: _____ Date: _____ Carrier: _____ To: _____ (Country of destination)		UNITED STATES DEPARTMENT OF JUSTICE Immigration and Naturalization Service ARRIVAL-DEPARTURE RECORD FORM I-94 (REV. 9-1-71) FORM APPROVED OMB NO. 43-RO496

Reverse

Issued to aliens admitted temporarily and shows the date to which admitted and any extensions thereof. Generally, employment in U.S. is not permitted.

**FORM 1-94 (ARRIVAL-DEPARTURE RECORD)
(PAROLE EDITION)**

Family Name (Capital Letters) DUMAS	First Name Keith	Middle Initial A.	D-520
Country of Citizenship Jamaica, West Indies	Passport or Alien Registration Number #15772		
United States Address (Number, Street, City and State) 727 West 11th Street, Indianapolis, Indiana			
Airline and Flight No. or Vessel of Arrival BWIA #402	Passenger Boarded at Kingston, Jamaica		
Number, Street, City, Province (State) and Country of Permanent Residence 16 Randwick Drive, Kingston, Jamaica (All 150 607)			
Month, Day and Year of Birth September 13, 1932	PAROLED PURSUANT TO SEC. 212(d) OF THE I. & N. ACT TO: November 20, 1971		
City, Province (State) and Country of Birth St. Ann, Jamaica	PURPOSE: 1st preference beneficiary.		
Visa Issued at (I-512)	(Port) HMM	(Date) 12/22/70	(Officer) JGH
STAPLE HERE	Month, Day and Year Visa Issued		

SURRENDER THIS COPY WHEN LEAVING
THE UNITED STATES. SEE REVERSE
FORM 1-94

Front—Actual Size

IMPORTANT NOTICE

Your parole into the United States does not constitute an admission under the terms of the Immigration and Nationality Act. You must observe the conditions of the parole and failure to comply with any of those conditions may result in the revocation of your parole. If, for any reason, you do not proceed to the address shown on the face of this form, or if after arrival, you change your address, you must immediately report to the nearest office of the Immigration and Naturalization Service. You must also report to the nearest office of the Immigration and Naturalization Service if your status is not otherwise changed or if you do not leave the United States before the termination date shown.

- UPON DEPARTURE FROM THE UNITED STATES**
- By sea or air surrender this permit to transportation line.
 - Over Canadian border, surrender this permit to Canadian Immigration Officer.
 - Over Mexican border, surrender this permit to United States Immigration Officer.

DEPARTURE RECORD

Port:

Date:

Carrier:

To:

(Country of disembarkation)
UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Form Approved Budget Bureau No. 43-11117
ARRIVAL - DEPARTURE RECORD
FORM 1-94 (Rev. 4-1-67) (Parole Edition)

SAMPLE

Reverse

Issued to aliens who have been paroled into the U.S. and shows date to which paroled and other limitations. Except for emergencies, medical treatment, or similar limited paroles, employment is generally permitted.

FORM I-95A (CREWMAN'S LANDING PERMIT)
FORM I-95A (CREWMAN'S LANDING PERMIT)

Family name		Given name		Initial	Soundex
Turner		James		N.	T-656
Home address and name of relative or friend residing there					
#10 Downing Street London, England - William Turner (Father)					
Address in the U.S.				Date and place of birth	
Smith & Jones Agents, Baltimore, Maryland				January 1, 1922 London, England	
Hair	Eyes	Height	Weight	Sex	A. No.
BLK.	BRN.	5'10"	170	<input checked="" type="checkbox"/> M <input type="checkbox"/> F	AL5335322
Action by Immigration Officer				Passport (No. and Nationality)	
Washington, D. C.				D-1 4236 British	
You are required to depart from U. S. on				Arrived by	
next sailing of named vessel. You may not				S/S North Star	
be paid off or discharged in the U. S. in				MAY 12 1966 WAS 3	
no event is stay authorized beyond 29 days.				U. S. Immigration Officer	
Form Approved Budget Bureau No. 43R 350.3				Form I-95A (Rev. 9-1-64) CREWMAN'S LANDING PERMIT	

ANY HANDWRITTEN ENTRIES MUST BE IN BLOCK
 CAPITAL LETTERS

Front—Actual Size

U. S. DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE		By accepting this conditional permit to land the holder agrees to all the conditions incident to the issuance thereof, and to deportation from the United States in accordance with the provisions of section 262(b) of the Immigration and Nationality Act.		SIGNATURE OF IMMIGRATION OFFICER
				WAS 3
DATE OF ARRIVAL	PLACE OF ARRIVAL	SAMPLE		
JUN 20 1966				

Reverse

Issued to alien crewmen admitted for a period not to exceed 29 days
 from last arrival either as a "D-1" which requires departure on the
 same vessel, or "D-2" which permits reshipping on another vessel.
 Employment in the U.S. is *not* permitted.

FORM I-184 (ALIEN CREWMAN LANDING PERMIT
AND IDENTIFICATION CARD)

<div style="font-size: 48pt; font-weight: bold; opacity: 0.5;">SAMPLE</div> <div style="font-size: 10pt;">PHOTOGRAPH</div>	NAME <u>Helmut SCHMIDT</u>
	BIRTHPLACE <u>Hohestein, Ger.</u>
	BIRTH DATE <u>Sept. 5, 1928</u>
	NATIONALITY <u>German</u>
NO. 15,111,111	
Form I-184 (4-1-58) 16-74106-1 GPO	

Front—Actual Size

<p>ALIEN CREWMAN LANDING PERMIT AND IDENTIFICATION CARD</p> <p>THE RIGHTFUL HOLDER OF THIS CARD IS AN ALIEN CREWMAN GRANTED SHORE LEAVE IN THE UNITED STATES. VALID ONLY IF THE BEARER IS EMPLOYED ABOARD A VESSEL NOW IN A UNITED STATES PORT. INVALID FOR ALL PURPOSES 29 DAYS AFTER LAST ENTRY TO THE UNITED STATES. THE BEARER IS NOT PERMITTED TO WORK OR TO RESIDE IN THE UNITED STATES.</p> <div style="text-align: center; font-size: 24pt; font-weight: bold; opacity: 0.5;">SAMPLE</div> <p>UNITED STATES DEPARTMENT OF JUSTICE IMMIGRATION AND NATURALIZATION SERVICE</p>
--

Reverse

May be issued in lieu of Form I-95A (page 16) to bona fide crewmen, permitted shore leave not to exceed 29 days, who are employed on passenger vessels making regular trips to the United States. The form is printed on buff paper and is laminated in plastic. Employment in the U.S. is *not* permitted.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GAYLE McQUOID HOLLEY, Individually and :
on behalf of JAMES McQUOID, NORMAN :
McQUOID, THOMAS McQUOID, DOUGLAS :
McQUOID, MICHAEL McQUOID and :
ADELAINE McQUOID, her minor children, :

Plaintiffs, :

-against- :

NOTICE OF CROSS MOTION

ABE LAVINE, as Commissioner of the :
New York State Department of Social :
Services, and JAMES REED, as Commissioner :
of the Monroe County Department of :
Social Services, :

Civil No. 75-151

Defendants. :

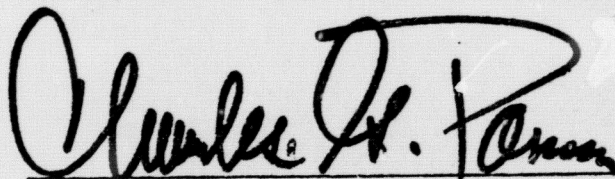
PLEASE TAKE NOTICE that, upon the pleadings herein, and upon
all the papers served by the plaintiffs attorney by mail on the 30th day
of June 1976 whereby the plaintiffs gave Notice of a ^{Motion for} Summary Judgment on
their behalf and upon the annexed Affidavit of Charles G. Porreca, Esq.,
Social Services Counsel for the defendant James Reed, Commissioner of the
Monroe County Department of Social Services, and upon all papers and
pleadings heretofore submitted to this court on behalf of the said defendant,
and upon all prior proceedings heretofore had herein, the undersigned will
make a Cross Motion against the argument of the Motion of the plaintiffs at
the United States Court House, No. 100 State Street, City of Rochester,

County of Monroe and State of New York, on the 12th day of July 1976 at 10:00 o'clock on the forenoon of that day or as soon thereafter as counsel can be heard relative to Rule 56 of the Federal Rules of Civil Procedure, for an Order granting Summary Judgment in favor of the said defendant and against the plaintiffs declaring that Section 131-k of the Social Services Law of the State of New York, and section 349.3 of Title 18 of the New York Code of Rules and Regulations, both as enacted and applied, do not conflict nor are they inconsistent with any Federal Statute or Regulation and in particular section 233.50 of 45 Code of Federal Regulations, and further declaring that the aforementioned statute and implementing Regulations do not deprive the plaintiffs of Equal Protection of the laws and due process of law, and further declaring that the said statute and Regulations are consistent and in conformity with the Social Security Act and that the plaintiffs have not been deprived of any rights guaranteed to them and secured by the Constitution and statutes of the United States, and further declaring that there is no genuine issue as to any material fact herein, and that the defendant James Reed, as Commissioner of the Monroe County Department of Social Services, is entitled to judgment as a matter of law.

PLEASE TAKE FURTHER NOTICE that the defendant James Reed, as Commissioner of the Monroe County Department of Social Services, will also move the court at said time and place for such other and further relief which to the court might seem just and proper.

Dated: July 8, 1976

Yours, etc.



CHARLES G. PORRECA, Esq.

Social Services Counsel
Attorney for Defendant James Reed,
As Commissioner of Monroe County
Department of Social Services
111 Westfall Road
Rochester, New York 14620
Tel: (716) 442-4000

TO:

K. WADE EATON, Esq.
Greater Up-State Law Project
80 West Main Street
Rochester, New York 14614

ALAN W. RUBENSTEIN
Principal Attorney
The Capitol
Albany, New York 12224

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GAYLE McQUOID HOLLEY, Individually and :
on behalf of JAMES McQUOID, NORMAN :
McQUOID, THOMAS McQUOID, DOUGLAS :
McQUOID, MICHAEL McQUOID and :
ADELAINE McQUOID, her minor children, :

Plaintiffs, :

-against- :

ABE LAVINE, as Commissioner of the :
New York State Department of Social Services, :
and JAMES REED, as Commissioner of the :
Monroe County Department of Social :
Services, :

Defendants. :

AFFIDAVIT

Civil No. 75-151

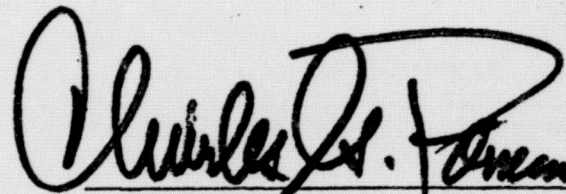
STATE OF NEW YORK)
COUNTY OF MONROE) ss:
CITY OF ROCHESTER)

CHARLES G. PORRECA, being duly sworn deposes and says:

1. Deponent is a Social Services Counsel for the Monroe County Department of Social Services and in this proceeding is attorney for defendant James Reed, as Commissioner of the Monroe County Department of Social Services; deponent is conversant with the facts of this action and is fully familiar with all the proceedings which have been had herein.

2. Deponent submits this Affidavit in support of the Cross Motion of defendant James Reed as Commissioner of the Monroe County Department of Social Services for Summary Judgment in favor of said defendant and against the plaintiffs.

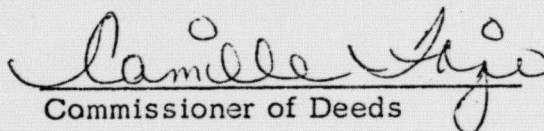
WHEREFORE, deponent prays for an Order of this court, based on all the papers heretofore submitted, herein and upon these papers, granting Summary Judgment for the defendant James Reed, as Commissioner of the Monroe County Department of Social Services.



CHARLES G. PORRECA

Sworn to before me

this 8th day of July, 1976



Commissioner of Deeds

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GAYLE MCQUOID HOLLEY, individually
and on behalf of JAMES MCQUOID,
NORMAN MCQUOID, THOMAS MCQUOID,
DOUGLAS MCQUOID, MICHAEL MCQUOID, and
ADELAINE MCQUOID, her minor children,

Plaintiffs

- vs -

CIVIL 75-151

ABE LAVINE, as Commissioner of the
New York State Department of Social
Services, and JAMES REED, as
Commissioner of the Monroe County
Department of Social Services,

Defendants

K. Wade Eaton
80 West Main Street
Rochester, N.Y. 14614
Attorney for plaintiffs

Louis J. Lefkowitz
Attorney General of New York
The Capitol
Albany, N.Y. 12224
Attorney for defendant State Commissioner of
Social Services
(Jean M. Coon, Assistant Solicitor General and
Alan W. Rubenstein, Principal Attorney, of counsel)

Charles G. Finch
111 Westfall Road
Rochester, N.Y. 14620
Attorney for defendant Reed as Commissioner of
The Monroe County Department of Social Services
(Charles G. Porreca, of counsel)

By notice of motion with supporting papers filed
July 2, 1976 plaintiffs move for summary judgment on the

first, second and fourth causes of action, and in the alternative, for the convening of a three judge court to hear and determine plaintiffs' motion for summary judgment.

By notice of motion with supporting papers filed July 9, 1976 the defendant State Commissioner of Social Services moves for summary judgment upon grounds set forth in the notice of motion and particularly designated as paragraphs A, B, C, and D. By notice of motion with supporting papers filed July 9, 1976 the defendant Reed as Commissioner of the Monroe County Department of Social Services moves for summary judgment upon grounds particularly set forth in the notice of motion. The motions have been submitted upon written memoranda.

Plaintiffs' motion for summary judgment and for a three judge court is in all respects denied.

Summary judgment is granted in favor of the defendant State Commissioner of Social Services against the plaintiffs declaring that New York Social Services Law Section 131-k and departmental regulation 18 NYCRR, Section 349.3, as enacted and applied, do not conflict with the provisions of 45 C.F.R. Section 233.50 but are in conformity thereto; that the statute and the regulation as enacted and applied do not conflict with the Social Services Act but are in conformity thereto; that plaintiffs have not been deprived of rights

secured by the laws of the United States; that plaintiff
Gayle McQuoid Holley is not permanently residing in the
United States under color of law.

ALL OF THE ABOVE IS SO ORDERED and ADJUDGED.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

November 18, 1976.

United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 75-151

GAYLE MCQUOID HOLLEY, individually and on
behalf of JAMES MCQUOID, NORMAN MCQUOID, et al.

vs.

JUDGMENT

ABE LAVINE, as Commissioner of the New York State
Department of Social Services, and JAMES REED, as
Commissioner of the Monroe County Department of
Social Services

This action came on for ~~trial~~ (hearing) before the Court, Honorable Harold P. Burke
, United States District Judge, presiding, and the issues having been duly ~~tried~~
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged that summary judgment is granted in favor of the
defendant State Commissioner of Social Services against the plaintiffs
declaring that New York Social Services Law Section 131-K and
departmental regulation 18 NYCRR, Section 349.3, as enacted and applied,
do not conflict with the provisions of 45 C.F.R. Section 233.50 but
are in conformity thereto; that the statute and the regulation as
enacted and applied do not conflict with the Social Services Act
but are in conformity thereto; that plaintiffs have not been deprived
of rights secured by the laws of the United States; that plaintiff
Gayle McQuoid Holley is not permanently residing in the United
States under color of law.

Dated at Buffalo, New York
of November , 19 76.

, this 22nd day

JOHN K. ADAMS

JOHN K. ADAMS
Clerk of Court

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GAYLE MCQUOID HOLLEY, individually
and on behalf of JAMES MCQUOID,
NORMAN MCQUOID, THOMAS MCQUOID,
DOUGLAS MCQUOID, MICHAEL MCQUOID,
and ADELAINE MCQUOID, her minor
children,

Plaintiffs,

-against-

ABE LAVINE, as Commissioner of the
New York State Department of Social
Services, and JAMES REED, as
Commissioner of the Monroe County
Department of Social Services,

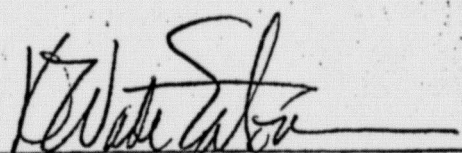
Defendants.

Civil No. 75-151

NOTICE OF APPEAL

Notice is hereby given that GAYLE MCQUOID HOLLEY,
plaintiff herein, individually and on behalf of her minor
children, hereby appeals to the United States Court of Appeals
for the Second Circuit from the Order of the Honorable Harold
P. Burke, dated 18th day of November, 1976, and the judgment
entered thereon the 23rd day of November, 1976.

November 24, 1976.


R. WADE EATON, ESQ.
Greater Up-State Law Project
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Rochester, New York 14614
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Attorney for Plaintiff